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EAST INDIA. (CASE OF MR. A. P. PENNELL.)

CORRESPONDENCE

RELATING TO THE

REMOVAL OF MR. A. P. PENNELL

FROM THE

INDIAN CIVIL SERVICE.

109013

Presented to both Houses of Parliament by Command of His Majesty.

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EAST INDIA (CASE OF MR. A. P. PENNELL).

Correspondence relating to the Removal of Mr. A. P. Pennell from the Indian Civil Service.

No. 1.

Letter from the Government of India to The Right Honourable Lord George Francis Hamilton, His Majesty's Secretary of State for India. No. 54 Home (Public) Department, dated the 30th May, 1901. Received 17 June, 1901.

We have the honour to forward, for your Lordship's consideration and orders, the accompanying papers regarding the conduct of Mr. A. P. Pennell of the Indian Civil Service, lately District and Sessions Judge of Noakhali in Bengal.

2. Mr. Pennell, in his capacity of District and Sessions Judge, was recently called upon to try a charge of murder brought against Sadak Ali and three others. The case began on the 7th January 1901. The Assessors, on the conclusion of the evidence and arguments of the case, gave their opinion on the 25th January. The case was then adjourned for judgment till the 28th idem, but delivery of judgment was, for various reasons, postponed by Mr. Pennell till February the 15th. Of the four accused, one was acquitted by him, two were convicted of murder and sentenced to transportation for life, and the fourth (Sadak Ali) was convicted of murder and sentenced to death. It was incumbent upon the Sessions Judge to make a reference to the High Court for the confirmation of the sentence of death on Sadak Ali under section 374 of the Code of Criminal Procedure, and the judgment terminates with the words "the proceedings will be submitted to the High Court for confirmation of the sentence of death passed upon the accused Sadak Ali." No reference was, however, made to the High Court; and on the 4th of March, in consequence of the failure of Mr. Pennell to make over, in accordance with their directions, the record to the Registrar of the Court, the Honourable Judges recommended his suspension. Orders were passed by the Government of Bengal on the same date suspending Mr. Pennell from the office of District and Sessions Judge. Mr. Pennell has subsequently appealed to Your Lordship against these orders, with which we have declined to interfere, and has asked that he may at once be reinstated and compensated for the treatment to which he has been subjected.

3. The record was produced by Mr. Pennell to the High Court on the 6th of March. The judgment had already been published, without any official authority, in instalments in certain newspapers. The first portion of it that appeared in print was made public in the "Amrita Bazar Patrika," and its publication in that newspaper was completed on 5th March. Moreover, prior to the delivery of judgment by Mr. Pennell, extracts purporting to be made from the order sheet in the case of the King-Emperor against Sadak Ali and others, and which were in fact copies of orders passed by Mr. Pennell after 25th January, were published in the "Amrita Bazar Patrika." Judgment was not given by the High Court until the 17th April. The accused Sadak Ali had then been under sentence of death for more than two months. The High Court set aside the conviction against him and directed that he should be retried. The retrial has since taken place; and Sadak Ali has been sentenced to transportation for life. The conviction and sentence of transportation for life passed on the two other accused persons were also set aside by the High Court.

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4. On the day on which judgment was delivered in the case of Sadak Ali and others, Mr. Pennell caused Mr. Reily, the District Superintendent of Police of Noakhali, to be arrested, and, on the following day, recorded proceedings in the matter, which purported to be held under Section 477 of the Criminal Procedure Code. He therein stated that he considered it his duty to hold an inquiry preliminary to committing Mr. Reily to the High Court, to be tried for giving false evidence in the case against Sadak Ali, for forging a record of a Court of Justice, and for fraudulently using as genuine a forged document which he knew to be forged, and he fixed 25th February as the day for the commencement of the inquiry. Mr. Reily was, a few days after the date of this order, released by the High Court on bail, which had been previously refused by the Sessions Judge. An appeal to the High Court against Mr. Pennell's order of 16th February was heard by the same Bench which disposed of the appeal of Sadak Ali and others, and on the 26th of April, 1901, the High Court set it aside also.

5. In disposing of the case of Sadak Ali and of the appeal in the matter of the proceedings taken against Mr. Reily, the High Court passed very severe criticisms upon the action of Mr. Pennell. They said that he had reversed the wholesome rule and right principle of law that a person accused of a crime should be presumed to be innocent until he is proved to be guilty. They found that Sadak Ali had not had a fair trial in the Lower Court, and accordingly they set aside his conviction, and directed that he should be retried. Mr. Justice Amir Ali observed that Mr. Pennell's judgment, which extended to 80 pages of print, and which had taken him 16 days to write, "teemed with observations which prove to us beyond reasonable doubt that, whatever the causes, he had started upon the trial with the settled idea that not only the accused before him, but the others, whose names had been given by the complainant and his partizans, were guilty." In another part of his judgment the learned Judge remarked that Mr. Pennell "in his observations on the conduct of the Superintendent of Police, appeared to have exceeded all legitimate limits of criticism;" that there was "no possible excuse for introducing into the judgment matters which have not the remotest relevancy to the case, and comments on persons who have no sort of connection or concern with it;" and that "the introduction upon the record against all rules and principles of evidence of documents which had not the faintest bearing on or connection with the case which the Sessions Judge was trying, with the plain object of enabling him to ventilate his own grievances, real or fancied, and delivering a homily to the public upon the general wrong doing of high placed officials, had made a travesty of justice." On the same occasion Mr. Justice Pratt, the colleague of Mr. Justice Amir Ali, spoke as follows:—

"The spectacle which Mr. Pennell, the Sessions Judge, has presented in this case must be painful to every right thinking man.

"The record abounds with documents which were not used in evidence either by the prosecution or on behalf of the defence. Mr. Pennell has chosen to import them himself and to make them exhibits in defiance of the law of evidence, and ostensibly that they may be made public for his own personal and ulterior purposes.

"He has set no bounds to his intemperate language, nor hesitated to heap vituperation upon the Viceroy, Lieutenant-Governor, High Court Judges, and many others wholly unconnected with the case before him. Imagining himself safe under the shield of what the law calls 'privilege,' he has taken an undue advantage of his position as Judge in order to vent his irritation upon all and sundry who, he conceives, have incurred his resentment. It is not that he has in an unguarded moment given utterance to some ill-advised expression. Fully one-third of the judgment, which occupies 80 pages of print, and which he admittedly took 16 days to write, is devoted to a scathing condemnation of officials high and low in respect of matters wholly irrelevant to the case under trial. It can hardly be deemed honourable for a Judge to draw pay from Government for time spent not in performing the plain judicial duty that lay before him, but in elaborating an uncharitable indictment against that very Government, as well as against several individuals whose position as he well knew precludes them from offering any reply."

6. In the subsequent appeal brought by Mr. Reily against Mr. Pennell's order of the 16th February, the Court, composed of the same learned Judges, expressed the strongest disapproval of the Sessions Judge's action in committing Mr. Reily to prison for nine days when there was not even a *primâ facie* case

against him. They held that "apart from the illegality of the order of commitment, and dealing with the merits of the case, there was no ground for the proceeding," and that "in the judgment of the Sessions Judge, beyond surmises and assumptions, they found nothing to justify the view that the petitioner (Mr. Reily) had wilfully perjured himself or intentionally given false evidence in Court. There was less ground even for the charge of forgery." They summed up the judgment in the words: "We regret to observe that in dealing with this matter the Sessions Judge does not seem to have maintained a judicial balance of mind"; and accordingly they set aside his order.

7. These were the judgments of the High Court of Calcutta upon the two cases in which Mr. Pennell, as Sessions Judge at Noakhali, has recently been concerned. We have never read, and we cannot imagine, a more severe or uncompromising condemnation of the conduct of a Judge, both in his treatment of the judicial and of the general aspects of the case before him, than was passed upon Mr. Pennell on this occasion: and we desire to express to your Lordship our opinion that his conduct entirely merited the censure which the Judges of the High Court thought fit to apply to it. The spectacle of a Judge who treats the Bench as a public platform for the airing of his own grievances, for the gratification of personal animosity, or for the delivery of a polemical harangue, is profoundly discreditable both to the administration of justice and to the cause of law and order in this country. Such an attitude is not redeemed by ability, and is aggravated by malevolence. It deserves, in our opinion, the severest reprobation that is capable of being meted out to it.

8. It was upon receipt of the judgments in these two cases that the Lieutenant-Governor addressed an inquiry to the High Court as to whether the Honourable Judges were in agreement with him in thinking that Mr. Pennell could not again be placed in the office of Civil and Sessions Judge. The Judges replied that "inasmuch as Mr. Pennell had shown himself unfit to discharge judicial functions, they agree that he ought not again to be placed in the office of District and Sessions Judge." Sir John Woodburn thereupon reported to us, that, for reasons to which we shall presently allude, Mr. Pennell was not less unfit to be employed in any executive than in any judicial capacity; and that he accordingly recommended his removal from the Public Service, and retirement on such compassionate allowance as we might think right to recommend to Your Lordship. It is this recommendation upon which we are now called upon to express our views.

9. We will first deal with the circumstances of the recent trial, in so far as it is necessary for us to do so. The judgment of Mr. Pennell was in its essence —until this was lost sight of and forgotten—an indictment of the conduct of the local Police. We do not quarrel with this attitude on the part of the Sessions Judge. There is much, in our opinion, to show that the administration of the Police in the Noakhali district is not in a satisfactory state. This is one illustration of a case, the gravity of which is candidly acknowledged by the Government of India, and to which they are addressing their serious attention. In the district under examination the matter has excited the earnest attention of the Lieutenant-Governor, who has directed a special inquiry that is now in progress. In their judgment of the 17th April, the Judges of the High Court have stated the attitude which a Judge should take in respect of any condemnation of the action of the Police, in a case which comes before him, in language which will commend itself to all reasonably minded men. Some justification might, indeed, be offered for a Judge if, led away by feelings of honest indignation at what appeared to be oppressive treatment, he hastily strayed beyond the bounds of judicial language. But no excuse of this nature can be offered on behalf of Mr. Pennell. It cannot be pleaded on his behalf that he has been led by inexperience into using other than judicial language. The language used in his judgment is not that of the righteously indignant Judge, and, in paragraph 2 of his published memorial to Your Lordship, dated 23rd March last, he has himself stated that he had deliberately determined to make use of the judgment in order to attack the Government and the higher judicial authorities in India. Mr. Pennell has advanced, as the reason for his extraordinary action, the letter

addressed to him by Mr. Buckland, Chief Secretary to the Government of Bengal, dated January the 26th (enclosure No. 18 of the Bengal Government's letter of May the 9th), regarding the improper manner in which Mr. Pennell had, in his letter to Mr. Buckland of 31st December, 1900, referred to one of the Judges of the High Court. The fact that there was no foundation for Mr. Pennell's contention that this letter constituted an attempt on the part of the executive Government to intimidate him with a view to preventing him from directing the prosecution of Mr. Reily, is completely established in the Bengal Government's letter. We are unable to find anything to show that Mr. Pennell's action was dictated by good faith or integrity of purpose. In our opinion his judgment can only be regarded as a vituperative and calumnious attack on all constituted authority in this country, and his motives in writing it can be adequately inferred from the fact that publicity was given to it before the record was permitted to go to the High Court. It is not necessary to refer here to any of the matters foreign to the question of the guilt or innocence of the accused persons being tried before him, which Mr. Pennell introduced into his judgment, since an examination of them is not material to the consideration of Mr. Pennell's action in importing them into the record. But, if the value of his charges against the Local Government and against other persons may be estimated from the character of the accusations which, in the course of the judgment, he thought fit to level against the Government of India, in connection with the notorious Chapra case, we may inform Your Lordship, without any demur, that the latter were destitute of any truth from beginning to end.

10. There remain four other aspects of Mr. Pennell's case, to which we have been constrained to give our own, and to which we invite Your Lordship's attention.

The first of these is Mr. Pennell's previous conduct upon the Bench. The recent occasion has been by no means the first on which his proceedings as a Judge have exposed him to the censure of the High Court. In July, 1898, the High Court set aside an order passed by Mr. Pennell as Sessions Judge of Mymensingh, and directed the Registrar to expunge from the record in the case of Baroda Nath Bhattacharji *versus* Kerait Shaikh certain objectionable remarks regarding the conduct of Government, the Magistrate, and the Deputy Magistrate.

In March 1900 the High Court again instructed him, with reference to the judgments recorded by him in two appeals which came before him when acting as Sessions Judge of Saran, that a judicial officer is not warranted in making any imputation against the character of any person in the course of judicial proceedings, unless some substantial ground arising out of the proceedings exists for his doing so, and that he is still less justified in making a general imputation against a whole body of public servants at random, and unnecessarily for the purposes of the case. It was stated that certain passages in the judgment in the appeal of Narsingh Singh *versus* the Queen-Empress had been expressed in terms which the Judges regarded as intemperate and conspicuously wanting in that sense of dignity and self-restraint which ought to characterize all judicial utterances. Mr. Pennell was reminded that the Court had, on a previous occasion, been compelled to expunge portions of a judgment delivered by him, as intemperate in expression and containing improper and uncalled for imputations, and the Judges expressed a hope that they would not have to admonish him again.

The transfer of Mr. Pennell from Saran to Noakhali in 1899 was further due, not, as he falsely states in his judgment now under notice, to his conduct in the Chapra case, but to his incompetence as a Judge. Mr. Pennell, as Additional Judge of Saran, had allowed the arrears of Sessions cases to accumulate to such a degree that it was considered hopeless to expect their early disposal as long as he remained in occupation of that post.

11. The second aspect is Mr. Pennell's conduct in connection with the present case, which has revealed a complete disregard of all official discipline, that is incapable of any other interpretation than a studied revolt against superior authority, and a wilful desire to provoke removal from the service of

which he is a member. The Lieutenant-Governor has noticed that, though refused leave by the Local Government on 27th February, Mr. Pennell nevertheless disobeyed orders and left the station. On the 3rd March he was ordered to return there, and again disebeyed. On the 4th March he was ordered to deliver over the record to the High Court, by the Officiating Registrar, in accordance with an order issued by the Criminal Bench. He declined, and treated the order with contempt. On 5th March, he was again ordered to return to Noakhali, and again disobeyed. When he did subsequently return, it was only to receive a public ovation, which was, as the Bengal Government observes, intended as a political demonstration. Mr. Pennell has further continuously transgressed the orders of the Government of India relating to the communication by servants of Government of official documents or information to the public press by making public many of the papers relating to the recent case, including the improper and disrespectful memorial to Your Lordship of the 23rd March, which was returned to him. The Government of India have in consequence been placed in the intolerable position of reading in the newspapers from day to day the first intimation of the proceedings of an insubordinate official, of whose conduct they had no official cognizance, and over whom they were powerless to exercise control. Among the papers to which publicity was thus given in the Press was a letter, purporting to have been written by Mr. Pennell to the Government Prosecutor at Noakhali with reference to the retrial of Sadak Ali, and alleged to have been handed to the papers by Mr. Pennell himself. In this communication, a copy of which is included in the enclosures to this despatch, Mr. Pennell instructed the Government Pleader in what manner he ought to proceed in order to secure a verdict against the man for sentencing whom to death he had himself been overruled and he further betrayed a disrespect towards the Judges of the High Court who had ordered the retrial, and a personal animus against the victims of his own original judgment, which would be incredible were they not in entire keeping with every other incident in his conduct. Finally, Mr. Pennell has left India not only without leave, but in open disregard of an intimation that such leave had not been granted to him. The Bengal Government, on hearing that Mr. Pennell proposed to start for England, referred to us the question whether he should be allowed to proceed. We requested them to inform him that under Art. 8 of his covenant he could not leave India without permission. Mr. Pennell has written a letter, dated 14th May, in reply, stating that he was unaware whether he had to apply to the Government of India or the Government of Bengal for permission, and that he proposed to leave the following day in anticipation of permission being given by the requisite authority. He sailed from Bombay on 15th May. Like all other officers of Government, Mr. Pennell is under an obligation to make himself familiar with the leave rules, and it is absolutely inconceivable to us that any Civil Servant could imagine for a moment that he could leave India at his own pleasure. Art. 218 of the Civil Service Regulations prohibits leave of absence being granted for a definite period to an officer suspended from duty, and provides that, if permission to proceed to England is granted in such a case, it should only be for such period as the Secretary of State may determine. We can only consider Mr. Pennell's action in this matter as due to a deliberate disregard of all rules and regulations which is in entire harmony with his previous behaviour ; and, in our opinion, it amounts to wilful desertion.

12. Thirdly, we desire to refer to the memorial which Mr. Pennell has addressed to your Lordship regarding his suspenion from duty. His original memorial was forwarded to the Bengal Government on the 23rd of March, and a copy of this document has, we understand, reached your Lordship. The Lieutenant-Governor very properly declined on 2nd April to forward the memorial until certain disrespectful and improper language had been omitted from it. Mr. Pennell, on April 29th, submitted a revised memorial. The contentions advanced in the memorial are that no charges were framed against Mr. Pennell, that he was not asked for any explanation, and that no limit was placed on the period of his suspension. The High Court's letter of the 4th March, 1901, to the address of the Bengal Government, gives the reasons for which the Court recommended his suspension. In our opinion, those reasons entirely justified, and in fact rendered necessary, the action taken by the Bengal Government.

We cannot in any way accept Mr. Pennell's assertion that he was not unwilling to surrender the record. He excuses himself for not having made the reference to the High Court required by the law because the file was in the copying department from the 16th to the 28th of February. Admitting that so much time was required in order that the judgment might be copied for the use of the appellants, there was, in our opinion, no reason whatever for the subsequent delay. The suggestion made in Mr. Pennell's letter of 28th February (enclosure No. 31 of the Bengal Government's letter of 9th May), that it was necessary for him to make the record personally over to the High Court, and to have some of the exhibits photographed before the record passed out of his hands, seems to us to be puerile, and the explanation offered in the memorial of his not having made the record over to the Registrar on 4th March, does not in the least palliate his contemptuous treatment of the order by the High Court. In our opinion it was not necessary that any charges should be framed, or that any explanation should be demanded from Mr. Pennell, before the order for his suspension was passed.

It was clearly impossible that a Judge, who had behaved in such a manner as Mr. Pennell had done in respect of the delivery of the record to the High Court, should continue in office. The actual cause of suspension having been his failure to deliver the record, the High Court, on the conclusion of the appeal to which the record referred, intimated on the 23rd April that Mr. Pennell had by his suspension to that date been sufficiently punished for his contumacy in not surrendering the record. They could not, however, recommend his restoration to a Judgeship, and they concurred, as has already been pointed out, with the opinion of the Lieutenant-Governor, that he was unfit to be replaced in that position. It follows from our acceptance of this view that we think that Mr. Pennell has no claim whatsoever to reinstatement or to compensation—the two prayers contained in his memorial to Your Lordship of the 29th April.

13. The fourth consideration, which we have found it impossible to overlook, which was equally present to the mind of the Lieutenant-Governor of Bengal, and which we desire to commend to Your Lordship, is the conduct of Mr. Pennell in the previous stages of his official career. Mr. Pennell has now been a member of the Indian Civil Service for not far short of 16 years. We have already referred to his earlier conduct as a Judge, and to the reiterated censures which it has provoked from the highest judicial tribunal in the land. It is conceivable, however, that an individual, though disqualified by aptitude or temper from the becoming discharge of judicial functions, might yet be the possessor of faculties which would qualify him for an executive career. It is even conceivable that errors of egotism or judgment, which would discredit the Bench, might be condoned in consideration of exceptional abilities or service, in other spheres of employment. In common with the Local Government, we have made a careful examination of Mr. Pennell's previous record of service. We desire now to acquaint your Lordship with the result.

Mr. Pennell was employed as an Assistant Magistrate in Bengal from November, 1886, to March, 1889, and from March, 1889, to the end of November, 1889, in the Account Department, which he left at his own request. He was then transferred to Burma, in which Province he served in various capacities, as Assistant Commissioner, Settlement Officer, and Deputy Commissioner, until the 16th of January, 1895, when he was returned to Bengal. Since his return he has not been employed except in a judicial capacity. Mr. Pennell was, while employed in Burma, charged with frequent acts of insubordination, and on two occasions his conduct came to the notice of Lord Elgin's Government. In the first of these instances, Mr. Pennell was guilty of a course of action which sufficiently reveals his uncontrolled and vindictive temper. When in the position of Settlement Officer, he himself laid hold of a Thugyi, the local official of a revenue circle in Burma, who had offended him by his demeanour, tied his hands behind his back with the cord from his office box, and with his own hand inflicted a severe beating upon the Thugyi with his riding whip. On the same day Mr. Pennell gave the Thugyi a verbal order to appear before him at a particular village three days afterwards. On arrival at that village Mr. Pennell found that the Thugyi had left for Moulmein, and he issued a warrant for his arrest. He was

arrested and brought before Mr. Pennell two days afterwards. In spite of the fact that he was in possession of orders from the Deputy Commissioner of the district, dated the day before Mr. Pennell required his presence, ordering him to Moulmein, and of a subsequent order granting him two months' leave, Mr. Pennell directed him to pay a fine of Rs. 200 for contempt of Court, and to remain in custody until his examination had been completed. The opinion of this outrageous incident expressed by the Chief Commissioner, was that "Mr. Pennell's conduct throughout the affair had been wholly illegal and unjustifiable, and that his explanation was altogether unsatisfactory and showed a want of proper appreciation of the grave nature of the illegalities which he had committed. The Thugyi would have been perfectly justified in taking criminal proceedings against him, and appeared to have acted with great forbearance in spite of the cruel and illegal manner in which he had been treated." With this opinion we entirely concur. Mr. Pennell was punished for this serious offence by reduction from the responsible position of Settlement Officer to that of Assistant Commissioner of the first grade, and was debarred from being placed in charge of a district until he had shown himself fit for that position. He failed, however, to profit by the lesson which he had then received, and in the following year Sir Alexander Mackenzie found it necessary to record the note, printed as enclosure No. 5 of the Burma papers* attached to the Bengal Government's letter of the 9th May. From this note we call attention to the following extracts :—

* Vide Annex No. 4, page 47.

> Mr. Pennell seems to look upon himself as the chartered libertine of the Burma Commission, and voids impertinences in his official and demi-official correspondence which would not be tolerated in any Government service elsewhere, and which it is high time should cease even here and from him.
>
> I am not sure that I ought not to suspend Mr. Pennell at once, or reduce him to a subdivision, reporting the facts of this and other cases in which Mr. Pennell has misconducted himself, to the Government of India, that he might be kept in Burma in a subordinate position until he learns how to behave himself decently; but I am willing to give him once more a *locus pœnitentiæ*.
>
> I may remark here that the reckless manner in which, not in his demi-official of the 25th August only but as a general rule in all his correspondence, Mr. Pennell exposes the work and character of the officers who have preceded him, is something unique in my experience. He has no good word for anyone but himself. I must say that so far I have seen little in his management of Maubin to warrant his self-complacency. His reports have all been months in arrears. The only thing that he seems to do *con amore* is to criticise the work of his predecessors and superiors, while he wastes his time on such long-winded impertinences as his letter of the 19th October and that to the Judicial Commissioner about the Kromer case.

Sir Alexander Mackenzie then reported to Lord Elgin's Government that the case referred to in his note was only the climax of a long series of acts of insubordination and impertinences of which Mr. Pennell had been guilty. He observed, "both the Financial Commissioner and the Commissioner of the Division in which Mr. Pennell served have complained to the Chief Commissioner repeatedly of Mr. Pennell's conduct in this respect. The Judicial Commissioner also had reason to find fault with him on the same account. The Chief Commissioner was inclined to believe that Mr. Pennell was to some extent a victim ef dyspepsia, and in the hope that he would, with better health, develop better manners, spoke very seriously to him at Maubin about his attitude towards his Commissioner. Mr. Pennell promised amendment, but afterwards sought to make the Chief Commissioner's leniency appear to be an approval of his conduct. Following on this came the present correspondence, and the Chief Commissioner felt that he had no option but to read Mr. Pennell a severe lesson." Mr. Pennell was at that time expected shortly to revert to Bengal, and Lord Elgin's Government directed that he should remain under the orders of the Chief Commissioner until he complied with the latter's direction, calling upon him to submit an explanation of his insubordinate attitude. On the 1st of January, 1895, the Chief Commissioner reported that Mr. Pennell had complied with his order and had asked indulgence for his conduct. This submission had, however, been very tardily made, and only after Sir Alexander Mackenzie had refused to receive a letter couched in very objectionable language, which Mr. Pennell had in the first instance forwarded to him. The order of

suspension against Mr. Pennell was accordingly withdrawn and he was permitted to return to Bengal. His proceedings subsequent to that date have already been related to your Lordship.

14. From this survey of the official career of Mr. Pennell, it is not, in our opinion, possible to draw any other conclusions than those which have been deduced by the Lieutenant-Governor of Bengal, namely, that Mr. Pennell is equally unfitted for judicial and for executive work, that he has been habitually and designedly insubordinate, that he has repeatedly abused his official position and powers, and that he is "so deluded by a morbid and sometimes malignant vanity, which has become the irreclaimable habit of his character, that he can no longer be employed to the advantage of Government in any capacity." We therefore concur with Sir John Woodburn in recommending that he should be removed from the service. His conduct therein has already set a most pernicious example; and his continuance in it would, in our opinion, amount to a public scandal. We have searched Mr. Pennell's career in vain for any extenuating circumstances which might justify us in asking your Lordship to sanction a compassionate allowance to him. But, in a record that has been marked throughout by insubordination and has culminated in wilful desertion, we have failed to find any ground for such indulgence, and upon this point we have accordingly no recommendation to make.

We have, &c.,

[Signed] CURZON.
A. P. PALMER.
C. M. RIVAZ.
T. RALEIGH.
E. FG. LAW.
E. R. ELLES.
A. T. ARUNDEL.

LIST OF ENCLOSURES IN No. 1.

Letter from the Government of Bengal, No. 123-A. D., dated the 9th May, 1901, and enclosures.

Letter from the Government of Bengal, No. 124-A. D., dated the 9th May, 1901, and enclosed memorial.

Letter from the Government of Bengal, No. 299-A. D., dated the 19th May, 1901, and enclosure.

Letter from Mr. Pennell to the Government Prosecutor, Noakhali.

Letter from the Chief Commissioner of Burma, No. 936–7 C.-29, dated the 27th November, 1894, and enclosures.

Letter to the Chief Commissioner of Burma, No. 2,080, dated the 21st December, 1894.

Enclosure 1 in No. 1.

Letter from C. E. Buckland, Esq., C.I.E., Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department. No. 123A.—D., dated Darjeeling, the 9th May, 1901.

I AM directed by the Lieutenant-Governor to lay before the Government of India the following report regarding the conduct of Mr. A. P. Pennell, I.C.S., late District and Sessions Judge of Noakhali.

2. The matters to be dealt with in this report are of twofold character—*first*, Mr: Pennell's judgment and proceedings in the Char Uria murder case, Emperor *versus* Sadak Ali and others, and, *second*, his general conduct in the discharge of his official duties. As these two matters are closely intertwined with each other, und considerable correspondence bearing on them has passed between this Government, the High Court, and Mr. Pennell, they will, perhaps, be presented most clearly to the Government of India by being treated in the chronological order of the occurrences and by their main points being summarised in this letter ; while the details will be found in the enclosures set out at length in an Appendix.

3. Early in December, 1900, Mr. Pennell obtained short casual leave to Calcutta, and when in Calcutta was granted a brief extension of this leave. On 25th and 26th of December, some more correspondence passed between Mr. Pennell and Mr. E. P. Chapman, then Registrar of the High Court, also on the subject of casual leave. Mr. Pennell remained in Calcutta during the Christmas holidays, and on the 31st December applied to me for further casual leave for the 2nd of January. On the same day he wrote to me a letter explaining his delay in applying for the leave for the 2nd of January, and in the course of this letter he used these words :—"Mr. Rampini has not replied either to my letter or telegram. I cannot compel him to reply. He has against me a private grudge of long standing in connection with a syndicate into which he entered for promoting a tea company."

Annex No. 15.

I gave him the leave for the 2nd of January as soon as possible, and put away the letter, being unable, through press of work and the number of official visitors, to attend immediately to the rest of its contents. During the month of January, the subject of the casual leave of Judges came prominently to the notice of Government ; and, in dealing with it, Mr. Pennell's letter of the 31st December, which had meanwhile been overlooked, again came before me. On the 26th of January, therefore, I wrote to him with reference to the passage in it relating to Mr. Justice Rampini, already quoted above. I wrote : "This is an imputation of motive which ought not to be made against any one, and certainly not against a Judge of the High Court, as a reason for his dealing with an official matter in a particular way. Before taking any action on the subject, I think it right to give you an opportunity of withdrawing this passage, if you desire to do so. If you prefer to let it stand, it will be my duty to bring it to Mr. Rampini's notice." On 29th of January, Mr. Pennell enquired of me by telegraph whether my letter of the 26th was written by order of Government ; and on the 31st he inquired by telegraph whether I had received his previous message. I took no notice of these telegrams, because he knew, or ought to have known, well enough that the Chief Secretary has the express or implied authority of the Lieutenant-Governor for all his official actions and correspondence ; and that it is not open to an officer serving under the Government to endeavour to differentiate between the orders emanating from the Lieutenant-Governor himself and those issued by a Secretary on his behalf, even without His Honour's knowledge. The correspondence ending with Mr. Pennell's letter of the 2nd March shows that he has never withdrawn the charge against Mr. Rampini which he has never substantiated. It it due to Mr. Rampini that it should be mentioned here that he has volunteered to Government an explanation which, as might have been expected, is perfectly satisfactory. It should also be stated that, while the correspondence just quoted was in progress, this Government had no knowledge whatever of the particular case on which Mr. Pennell happened to be engaged at Noakhali at the time my letter of the 26th of January was written in Calcutta and received at Noakhali. It appears from entry 18 on page 7* of the High Court's Paper-book in the Appeal case of Sadak Ali and others that my letter of the 26th January reached Mr. Pennell's hands during the hearing of the Char Uria murder case, and, without any justification whatever for doing so, he brought it as an Exhibit on the record of that case, with the remark :—"It seems to me that the matter may be something more than a coincidence, and that it may be an attempt on the part of the Executive authorities to intimidate me." My letter

Annex No. 18.

* *Vide* page 170.

made no reference whatever to the case which Mr. Pennell was trying, and nothing could have been further from the intention of Government than to interfere with or to appear to interfere with or to intimidate Mr. Pennell in any way. Had they wished to do so, that certainly would not have been the method they would have chosen.

4. It was on the 8th of February that the attention of Government was first drawn to the possibility of the development of a sensational case at Noakhali by the appearance, in a native newspaper published in Calcutta, of certain paragraphs purporting to be extracts from the order sheet of the case on which Mr. Pennell was then engaged. Up to that moment, the Government still had no knowledge of the case or any information whatever regarding it. The extracts which appeared in the native newspaper contained a greater portion of the entries 18 to 21 (pages 7 to 9* of the Paper-book) of Mr. Pennell's proceedings.

5. On the 14th of February, this Government, after consulting the Honourable Judges of the High Court, issued my Circular No. 1A to all District Judges under this Government with a view to regulate the practice under which casual leave might be obtained by those officers.

Annex No. 21.

6. On 15th of February, a telegram was received from the Magistrate of Noakhali to the effect that, in the Char Uria murder case, Mr. Pennell had charged the District Superintendent of Police, Mr. Reily, with offences under sections 193, 466, and 471 of the Penal Code, and that, section 466 not being bailable, the Judge had refused application for bail, had refused to hear the Magistrate, and told the Magistrate that he would not grant bail until Mr. Reily was suspended, and that Mr. Reily was in jail. The Magistrate asked for orders suspending Mr. Reily or any action which Government might deem advisable. On the 16th of February, this Government suspended Mr. Reily, and ordered the Magistrate to inform the Judge and apply for bail and furnish full particulars, including a copy of the Judge's proceedings. A copy of Mr. Pennell's proceedings of the 16th February on the Magistrate's application for bail for Mr. Reily is enclosed. On the same day, the Magistrate again telegraphed that the Judge refused application for bail of Mr. Reily, and had rejected the application for a copy of the proceedings, that separate proceedings were not yet drawn, and that particulars could not be furnished until a copy of the judgment had been received, the papers being voluminous. The Magistrate was then informed that, his application for bail having been refused, Government could do no more, and that Mr. Reily must make his own motion to the High Court by affidavit or as he might be advised. On the 20th of February, there were received from the Magistrate a copy of Mr. Pennell's proceedings under section 477 of the Criminal Procedure Code, dated 16th of February, Emperor *versus* Reily, and of a further order of the same date in the same matter. Under such circumstances, this Government could only allow the law to take its course in respect of Mr. Reily. It has to be mentioned that no authentic copy of Mr. Pennell's judgment reached the Government, although the judgment was delivered on the 15th of February, and although the judgment began to appear at once by instalments in the native daily papers, until printed copies of the Paper-book in the Appeal case to the High Court, which bears date 27th of March, were officially obtained by the Legal Remembrancer.

Annexures Nos. 22—24.

7. Mr. Pennell, having delivered his judgment by which one man was sentenced to death and two to transportation for life, applied on the 20th of February for casual leave. His application was received on the 23rd, and, in accordance with the usual practice, the High Court were asked by this Government whether Mr. Pennell's application should be granted. On receipt of their reply to the effect that his application should not be granted at present, Mr. Pennell was informed accordingly by telegraph on the 27th and by letter of the same date, enclosing a copy of the telegram. Moreover, by an oversight, the telegram was twice issued to him, both by myself and by my office. Thereupon,

Annex No. 26.

* *Vide* pages 170, 171.

Mr. Pennell, having received both the telegrams by which his application for casual leave was refused, proceeded to leave his station and came to Calcutta. His letter of the 28th of February shows how, with these two telegrams refusing his leave in his possession (a refusal which covered the whole of the applications contained in his letter of the 20th February), he nevertheless left his station in anticipation of sanction, and asked for approval to his action. He reached Calcutta late on Friday, the 1st of March. I was then directed to ask the High Court on the 2nd of March whether they had given Mr. Pennell any leave to come to Calcutta, and whether it was their wish that he should remain in Calcutta or be ordered back to his station, Noakhali, which he had left without orders. The High Court replied that they had not given Mr. Pennell leave; that they did not wish that he should leave Noakhali at present for various reasons, one of them being that the record of the capital sentence case had not up to the 1st been received by the High Court; and that in their opinion he should be ordered to return to Noakhali at once. Thereupon Mr. Pennell was ordered, in my letter No. 1480A.B., dated the 3rd of March, to leave Calcutta at once and return to Noakhali. He did not obey those orders.

Annex No. 31.

8. While Mr. Pennell was thus disobeying this Government in coming to Calcutta against orders and in not leaving when directed, he was engaged in a separate controversy with the High Court. The circumstances are set forth in the following letter, No. 600, of the 4th March, 1901, from Mr. R. Sheepshanks, the Officiating Registrar of the High Court, to my address :—

HIGH COURT.
ENGLISH DEPARTMENT.
Civil.
PRESENT :
The Full Court.

SIR,—I am directed by the Chief Justice and the Judges of this Court to request you to immediately lay the following matter before His Honour the Lieutenant-Governor.

2. From a Sessions statement submitted by Mr. A. P. Pennell, the Sessions Judge of Noakhali, it appeared that three persons, named Sadak Ali, Anwar Ali, and Aslam, had been convicted by Mr. Pennell on the 15th February last of murder under section 302 of the Indian Penal Code, one of whom, namely, Sadak Ali, had been sentenced to death. This morning the proceedings not having been submitted by Mr. Pennell under section 374 of the Code of Criminal Procedure, and the Criminal Bench having been informed by the Registrar that the record of the case is now in Calcutta, in the possession and custody of Mr. Pennell, the Judges sitting on the Criminal Bench issued an order that Mr. Pennell do make over and deliver the entire record forthwith to Mr. Sheepshanks, the Officiating Registrar, who was authorised by the order to receive the same.

3. I am directed to say that Mr. Sheepshanks, accompanied by Mr. Chapman, went to the Hotel Continental this morning to call upon Mr. Pennell to carry out the order of the Court. Mr. Sheepshanks and Mr. Chapman saw Mr Pennell at the Hotel at a quarter past 1 to-day, and Mr. Sheepshanks delivered to Mr. Pennell the proceeding directing him to deliver over the record in accordance with the order issued by the Criminal Bench. Mr. Pennell treated the proceeding with contempt, declined to reply to it, and did not hand over the record to Mr. Sheepshanks.

4. I am directed by the Chief Justice and the Judges of this Court, who are of opinion that Mr. Pennell's behaviour in this matter amounts to gross insubordination, and to misconduct within the terms of section 26 of the Code of Criminal Procedure, 1898, to recommend that the Local Government, in the exercise of the powers conferred upon it by the terms of the section, do immediately issue an order for Mr. Pennell's suspension, and to request that the Court may be at once informed of such orders as may be issued on this letter.

5. I am directed to recommend that an order issue also under section 26 of the Bengal, North-Western Provinces, and Assam Courts Act, 1887, suspending Mr Pennell from his office as District Judge.

Thereupon Mr. Pennell was by a Notification of the 4th March suspended from his office under section 26 of the Code of Criminal Procedure and section 26 of Act XII. of 1887. A copy of the High Court's letter and of the Notification was furnished to him, and at the same time it was pointed out to him that he had not obeyed the orders of the 3rd March directing his immediate return to Noakhali, and he was again directed to proceed there at once. These orders he again did not obey.

Annex No. 35.

9. Mr. Pennell then proceeded to Kurseong (although he had been twice ordered to return to Noakhali), and from there inquired whether it was in contemplation to frame any charges against him, and whether he would be

allowed to submit any explanation or to be heard in his defence. He was informed in reply, on the 13th of March, that this Government had at present no further information to communicate to him, and it was again pointed out to him that he had disobeyed orders.

10. Mr. Pennell then addressed you in his letter No. 2—Suspension, dated Calcutta, the 18th of March, which was forwarded to you under cover of my letter No. 2025A., dated 19th of March. It is within the knowledge of the Government of India that the Lieutenant-Governor then stated his opinion that the grounds on which the High Court had recommended Mr. Pennell's suspension amply justified the action which they recommended. At that time the Lieutenant-Governor was precluded from offering any further observations, as the Appeal case was then in the hands of the High Court, from whom His Honour expected to hear further in due course. Mr. Pennell was at once furnished with a copy of your letter No. 2691, dated the 20th of March, in which the Government of India declined to interfere with the orders passed by the Government of Bengal.

11. On the 23rd of March, Mr. Pennell addressed a memorial to the Secretary of State for India in Council through the Chief Secretary to this Government. A copy of this memorial will be found among the enclosures to this letter. As this memorial contained disrespectful and improper language, and, therefore, was inadmissible by the rules in force about the submission of memorials addressed to the Secretary of State for India, it was returned to Mr. Pennell for revision, if he thought fit, with my letter of the 2nd of April. The expressions which were open to objection were pointed out to him. A revised memorial was received from Mr. Pennell on the 30th of April, and has been laid before the Government of India with my separate letter No. 124A.—D. of this date. In this connection it may be mentioned that on the 21st of March, Mr. Pennell addressed a memorial to the Secretary of State, which appeared in the newspapers. The memorial of 23rd of March purports to be a copy of the memorial of the 21st of March. In the memorial of the later date, the word "surreptitiously" has been twice substituted for the word "privately" at the end of paragraph 6 of the memorial of the 21st March.

12. Mr. Pennell personally surrendered the record, containing his judgment of the 15th February, to the Registrar on the 6th of March, and the record being very voluminous, the printing was not finished until the 27th of March. When copies were delivered to the pleader for the appellant, Sadak Ali, the Easter holidays were then about to commence, and on the application of the pleader, the Appeal case was postponed and was taken up on the 10th of April, when the Court re-opened after the holidays. Judgment was delivered on the 17th of April. As no further communication had been received up to the 23rd April, I was directed to apply to the High Court for a copy of the judgments of the Criminal Bench, which had appeared in the newspapers. On the same date, the High Court furnished this Government with a copy of the judgments of the Criminal Bench (Mr. Justices Ameer Ali and Pratt) in the Appeal case, with special reference to the observations of those Honourable Judges upon the terms of Mr. Pennell's judgment. The High Court's letter went on to say that in their opinion the authority of the Court had been sufficiently vindicated, and Mr. Pennell sufficiently punished for his contumacy (*i.e.*, his insubordinate attitude towards the Court in refusing to hand over the record to the Registrar on the 4th March) by the suspension to which he had been already subjected on their recommendation.

Annex No. 41.

13. A copy of these judgments in Appeal as well as of the Paper-book, Part I. and Part II., of the Appeal, No. 173 of 1901, is enclosed for the information of the Government of India. In their judgments, the Criminal Bench discharged two of the accused, namely, Aslam and Anwar Ali, and ordered the retrial of the principal accused, Sadak Ali. The Government of India will observe the severe terms in which the Honourable Judges commented on Mr. Pennell's infringement of every canon of judicial decorum and judicial propriety, on his introduction into his judgment of irrelevant matters, on his

intemperate language, on his vituperation of the highest officials of the country and many others wholly unconnected with the case before him. No more severe remarks could be made by an Appellate Court than that the principal accused had not had a fair trial in the Court below, and that the Judge did not bring to the trial a calm and dispassionate mind. The Lieutenant-Governor has read these judgments of Mr. Pennell of the 15th of February and of the Criminal Bench of the High Court of the 17th of April with care and concern, and will further consider them later on.

14. It has been mentioned in paragraph 6 above that Mr. Reily, then District Superintendent of Police of Noakhali, was committed to jail on the 15th of February by Mr. Pennell. After a few days, he was released on bail by order of the High Court, and an application for the transfer of his case from Noakhali was lodged by him in the High Court. Subsequently, on the 27th of March, Mr. Reily's pleader stated to the High Court that it was no longer necessary to ask for a transfer of the case, but he applied for a postponement of all the proceedings in Mr. Reily's case, until the pending appeal in the murder case should be disposed of. His application was granted by the Court. After the appeal case had been disposed of, the rule for the transfer of Mr. Reily's case was discharged. The application on Mr. Reily's behalf to quash all the proceedings in his case came before the Criminal Bench on the 25th of April. In their judgment, delivered on the 26th April, a copy of which is enclosed, the High Court have acquitted Mr. Reily, holding that there is nothing in the evidence produced before Mr. Pennell in the trial of the murder case at Noakhali to support the charge on which Mr. Pennell committed Mr. Reily to jail. While the Judges censured Mr. Reily for an error of judgment in respect of a copy of a certain map, they held that in his proceedings Mr. Pennell did not maintain a judicial balance of mind, and they expressed the strongest disapproval of his illegal order in committing Mr. Reily to jail without the necessary preliminary enquiry.

15. Upon receipt of the judgments in the murder-appeal case the Lieutenant-Governor addressed the High Court. A copy of my letter, dated 27th of April is enclosed. The Lieutenant-Governor recapitulated to the High Court the several occasions—the Mymensingh case,* the Chapra case,† the Noakhali case, the case of Mr. Reily—in which Mr. Pennell has by his intemperate language and disregard of judicial canons drawn upon himself their official censure, both by letter and by reversion on appeal. His Honour expressed his opinion (based upon these cases) to the High Court that Mr. Pennell cannot be again placed in the office of Civil and Sessions Judge, and asked the Honourable Court whether they agreed with him. The Honourable Chief Justice and Judges of the High Court have in their letter No. 1164, dated 7th instant, expressed their opinion, upon the materials now before them, that Mr. Pennell has shown himself unfit to discharge judicial functions, and concurred with the Lieutenant-Governor that Mr. Pennell ought not again to be placed in the office of District and Sessions Judge.

* Annex No. 1.

† Annex No. 2.

16. The Lieutenant-Governor has been constrained, in the consideration of these judgments in the Noakhali case, to notice certain points, to which I am to invite the attention of the Government of India. But Mr. Pennell's judgment is of such great length and the inaccurate and unfounded assertions contained in it are so numerous that the Lieutenant-Governor cannot undertake to refer in this communication to more than a few of them.

Mr. Pennell contends in his judgment that he was transferred to Noakhali in consequence of his judgment in the Chapra case, and bases his argument on the circumstance that the transfer was subsequent to that judgment. The true facts are that his transfer to Noakhali had been settled long before the Government had heard of the Chapra case, and before the appeal had been preferred to him in that case. It was the outcome of correspondence which showed that he had allowed heavy arrears of Sessions cases to accumulate, and that it was hopeless to expect their early disposal while he held the Additional Judgeship of Saran-Champaran. The Government considered that he should be transferred to a lighter charge, and the light Judgeship of Noakhali was

accordingly chosen. The Additional Judgeship of Saran-Champaran, it may be observed, was a temporary one, and it was necessary that the fullest possible assistance should be given to the District Judge while it lasted. The High Court were informed that another Additional Judge would be sent to Chapra as soon as an officer was available. Mr. Pennell was then in temporary charge of the District Judgeship, pending the return of Mr. R. H. Anderson from furlough. Subsequently Mr. Fisher was selected for the Additional Judgeship, and he was posted to it when relieved by Mr. Carstairs, for whom he had been acting in the Sonthal Parganas. Before, however, he became available, Mr. R. H. Anderson relieved Mr. Pennell of the District Judgeship, and the latter was, as a purely temporary measure until the arrival of his successor, kept on at Chapra as Additional Judge. Mr. Pennell, whose judgment in the Chapra case was delivered on the 7th October, argues that, as he despatched a copy of that judgment to the Government on the 8th October, and he was informed of his transfer to Noakhali on the 16th, the Government must have read the judgment before passing the order for his transfer. The Government had in fact no knowledge that he had delivered his judgment when his transfer was formally ordered ; and the order was gazetted on the 18th October—as soon as it could be. It is true that Mr. Pennell sent a copy of his judgment to the Government, but his letter was received in the Calcutta Office, and the Durga Puja holidays (from the 9th to the 20th October) having then commenced, it was not forwarded to Darjeeling, where the Government was, until the 28th October, and did not reach the Chief Secretary until the 31st October, that is, 15 days after Mr. Pennell was informed of his transfer to Noakhali. A copy of the judgment submitted, with a report, dated the 1st November, 1899, by the Commissioner did not reach the Chief Secretary until even later—on the 10th November. These dates are all to be found in the printed records of this Government. I am to add, in conclusion on this subject, that any idea of transferring Mr. Pennell to Noakhali on account of his judgment was never under the consideration, or in the mind, of the Government. Obviously, no notice whatever could have been taken of the judgment until a copy was before the Government. It was with surprise that the Government read the suggestion, first made in the public press, that the transfer was due to the judgment. The Government, while stating in reply to a question in the Bengal Council that this was not the reason of the transfer, refrained from mentioning the real cause of the transfer, solely out of consideration for Mr. Pennell. It was not thought proper to make public the fact that he had shown himself unequal to the work at Chapra.

The Lieutenant-Governor, however, informed Mr. Pennell, at Noakhali, in December, 1899, that his transfer had been arranged before the Chapra case. What His Honour then said to Mr. Pennell about his judgment generally was that, if Mr. Pennell had delivered his judgment with the calmness and sobriety expected from every Judge he would have carried the sympathies of every reader, but that the violence of his language had alienated much of the support he would otherwise have received. The fact that his transfer was due to the arrears of Sessions work was also subsequently communicated to Mr. Pennell in the letter from Private Secretary of the 12th June, 1900, which he has irrelevantly made an Exhibit (No. X 28) in the Noakhali case. While bringing this letter on the record, Mr. Pennell has kept back the letter to the Lieutenant-Governor of the 21st May, to which it was a reply, and a subsequent letter of his of the 15th June, in reply to the Private Secretary. I am to submit copies of these letters. It will be observed that in the letter to the Lieutenant-Governor, Mr. Pennell wrote :—"I am sincerely sorry for my misbehaviour in the past and am earnestly desirous of doing better in the future. I feel that my judgment in the case of Narsingh Singh not only merited the censure which the High Court has bestowed upon it, but that it was wanting in charity, and that much else in my conduct has been even less defensible," and that in acknowledging the Private Secretary's letter he said :—"I shall be much obliged if you will inform the Lieutenant-Governor that I am very sensible of His Honour's kindness, and will do my best to deserve it." These unreserved and spontaneous communications he repudiated in October with similar

Annexures Nos. 3 and 5.

suddenness and spontaneity, stating that he was ill when he wrote them ; but it must be assumed that they were written deliberately and in full consciousness of their import. Notwithstanding this admission of misconduct in the past, promise of amendment in the future, and expression of indebtedness to the Lieutenant-Governor, Mr. Pennell has in his present judgment questioned the truth of the reason given for his transfer to Noakhali, and made those aspersions on the Lieutenant-Governor, other high officials, and even private individuals which form so large a portion of the judgment.

In this connection it is necessary to make clear that Mr. Pennell has no grievance whatever to excuse even irritation on his part. He was given privilege leave from Mymensingh (of the climate of which place he complained), when he had earned it after return from furlough, and he was posted to Chapra partly out of consideration for his health, because he desired a dry district. He was, again, told by the Chief Secretary in January last that he might have leave in the present year. As to his transfer to Noakhali, the reason of it was explained to him months ago ; and as to his being kept there for some time he had no ground of complaint. He was liable to serve in that district as any other officer, Judicial or Executive, of the Civil Service, and, as he was told in the Private Secretary's letter of the 12th June last, the district is not in any sense an undesirable one. Other officers have served there for many years.

Any grievance which Mr. Pennell may believe that he has against the Local Government is thus entirely the off-spring of a mind diseased by suspicion ; but the Lieutenant-Governor is constrained to the conclusion that he has been animated by even a worse feeling. It is impossible to read the slanders and insinuations of his judgment without the conviction that they have been inspired by malice. This conviction is supported by a perusal of the papers relating to his conduct in Burma, which are referred to in paragraph 21 below.

17. It has already been mentioned that Mr. Pennell put my letter of the 26th January to his address on the record of the murder case as an Exhibit, with the remark that "it may be an attempt on the part of the Executive authorities to intimidate me." The explanation given above that I, when writing on the 26th January, had no knowledge what case Mr. Pennell was trying at the time, is sufficient to refute Mr. Pennell's surmise, for which he had no justification. He similarly brought on the record on the 31st January, 1901, the Resolution of the Government of India on the case of Narsingh Singh, as if it had been delivered to him on that day. The Resolution was dated 18th April, 1900, and was forwarded to him on the 28th idem. The idea that the Executive Government have in any way endeavoured to interfere with, influence, or affect Mr. Pennell's judgment is an entire fiction of his imagination.

Page 143 of the Paper-book. [Appendix, page 339.]

Page 8 of the Paper-book. [Appendix, page 171.]

18. There would be no difficulty in extracting from Mr. Pennell's judgment of 15th February the objectionable passages in which he has introduced irrelevant matters entirely unconnected with the case, and has deliberately (for on the 4th February, 1901, he recorded that it was necessary that he should avoid any hasty expressions) traduced the highest authorities in the country and not hesitated to charge some of them with falsehood. The Lieutenant-Governor has no doubt that the Government of India will read these passages, as he has read them, with surprise and concern,—surprise that an officer of 15 years' service, a District and Sessions Judge, should be capable of recording them in judicial decisions,—concern at the pernicious example which, if allowed to pass unnoticed, would disorganize the entire administration of the province.

Page 9 of the Paper-book. [Appendix, page 171.]

19. This is not the first time that Mr. Pennell's proceedings as a Judicial Officer have been severely censured by the High Court. I am to invite the

attention of the Government of India to the copy of the judgment of the High Court (J. O'Kinealy, J., and G. S. Henderson, J.; dated the 1st July 1898) in the Mymensingh case of *Baroda Nath Bhattacharjee*, petitioner, *versus* Kerait Sheikh, in which the High Court set aside Mr. Pennell's order as without jurisdiction, and at the same time directed the Registrar to expunge all portions of the judgment of the Sessions Judge in regard to the conduct of Government and of the Magistrate and Deputy Magistrate. Also in connection with the Chapra case, to which Mr. Pennell has himself invited attention, the Registrar of the High Court was directed, on the 20th March 1900, to point out to Mr. Pennell that a Judicial Officer "is not warranted in making any imputation against the character of any person in the course of judicial proceedings unless some substantial ground arising out of the proceedings existed for his doing so. Still less is he justified in making a general imputation against a whole body of public servants at random and unnecessarily for the purposes of the case." Mr. Pennell was also informed of the Court's opinion that certain passages in his judgment in the case of Narsingh Singh were expressed in terms which the Judges regarded as intemperate and conspicuously wanting in that sense of dignity and self-restraint which ought to characterise all judicial utterances. He was then reminded of the Mymensingh case, and the Full Court expressed a hope that it would not be necessary for them to admonish him again on the subject.

Annex No. 1.

Annex No. 2.

20. It is thus apparent that, in spite of repeated warnings, Mr. Pennell is unable to resist the temptation of abusing his position as a Judicial Officer to introduce irrelevant matters into his judgments, to make improper imputations against individuals, and to indulge in intemperate language. In addition to these disqualifications, the High Court's judgment of 26th April in the case of Mr. Reily shows that Mr. Pennell deliberately sent to jail an officer of Government, without any legal justification for his action; that he did so with the deliberate intention of keeping him there for at least nine days without any preliminary enquiry or hearing, without, as the High Court find, any *primâ facie* case against Mr. Reily, without any adequate justification for the charge of perjury brought by himself against Mr. Reily, with less ground even for the charge of forgery, and with such an application of section 466, Indian Penal Code, to the case as to give colour to the suggestion that it was purposely used to deprive Mr. Reily of the right of bail. Mr. Pennell, it will be observed from the judgment of the High Court in the Mymensingh case, similarly assumed jurisdiction which he did not possess on a previous occasion. In that case he deliberately set aside an order of acquittal, against which an appeal lies only to the High Court at the instance of the Local Government. In paragraph 6 above it has been shown how Mr. Pennell acted when application for bail for Mr. Reily was made to him. Apart from all the disqualifications above enumerated, a Judge who can act deliberately in so illegal a manner shows himself to be unfit to occupy such a position. The Lieutenant-Governor has, therefore, on the evidence before him, come to the conclusion that Mr. Pennell is unfit not only to hold the position of District and Sessions Judge, but to exercise any judicial functions whatever. In this opinion he is corroborated by the opinion of the Honourable the Chief Justice and the Judges whom he consulted.

21. The Lieutenant-Governor has also examined the record of Mr. Pennell's services to see whether it would be possible to employ him in the Executive Branch of the Service. Mr. Pennell arrived in the country in November, 1886. He was employed as an Assistant Magistrate until he joined the Financial Department of the Government of India in March, 1889. Of his services in that Department the Lieutenant-Governor has no knowledge. Mr. Pennell served in Burma from 1889 till the end of 1894; and since that time he has been employed in a Judicial capacity in Bengal. On his return from Burma to Bengal, certain papers were received from the Chief Commissioner of that province, which show that Mr. Pennell, then a Settlement Officer, according to his own account, completely lost his temper with the Thugyi of the Mukyi Circle, tied his hands, and beat him with his riding whip. He subsequently

had the man arrested, himself imposed on him a fine of Rs. 200 on a charge of Contempt of Court, and consigned him to custody. The details are given in the enclosed papers. Mr. Pennell's conduct was declared to be wholly illegal and unjustifiable ; he was removed from the Settlement Department, ordered to pay compensation to the Thugyi, declared to be unfit for the charge of a district, reprimanded for his harsh treatment of a subordinate officer, and eventually suspended for insubordination for failure to comply with certain orders of the Chief Commissioner. The Lieutenant-Governor cannot employ in an Executive capacity an officer who is shown to have failed so entirely (though afforded more than one *locus penitentiæ*) as an Executive officer in Burma, and whose subsequent service in the Judicial Branch of the administration has exhibited only a development of those characteristics which caused his removal from the Executive Branch.

Annexures Nos. 46—50.

22. In both capacities, therefore, Mr. Pennell has shown himself to be an altogether unsatisfactory officer. Insubordination, disregard of all the accepted canons of official conduct, abuse of his official position and powers, sometimes bearing the strongest indications of malice, have charcterised his career. His recent insubordination to this Government in leaving Noakhali when distinctly forbidden to do so, and in not returning there when twice ordered to do so, was so marked that the Lieutenant-Governor would have been obliged to suspend him for his disregard of the orders conveyed in my letter, No. 1480A.B., dated the 3rd March, 1901, had not the High Court's letter, No. 600, dated the 4th March, called for Mr. Pennell's immediate suspension on the recommendation of the High Court. The Lieutenant-Governor has therefore been unable to remove the suspension which was originally imposed on that recommendation. Although the High Court expressed their opinion that by the period of suspension which he has undergone, Mr Pennell has been sufficiently punished for his insubordinate attitude to them, they did not ask for his restoration to a Judgeship (which would have been the logical consequence of the removal of the suspension), and they have since agreed with the Lieutenant-Governor as to Mr. Pennell's unfitness for the discharge of judicial functions. It is now impossible for the Lieutenant-Governor, in view of all the circumstances of Mr. Pennell's official history now put on record, to re-employ Mr. Pennell pending receipt of the orders of the Government of India on this report.

23. Before coming to his final recommendation as to the measures to be adopted towards Mr. Pennell, the Lieutenant-Governor has considered whether his conduct subsequent to the delivery of the judgment (which speaks for itself) can be regarded as in any way affecting the decision which should be taken in respect of Mr. Pennell. He has failed to find any extenuating circumstances or any redeeming points in his behaviour. Allusion has been made to Mr. Pennell's marked insubordination to Government. Mr. Pennell has taken the unusual step of forwarding a memorial direct to the Secretary of State, not only containing disrespectful and intemperate language, but also full of incorrect statements which can be separately refuted in detail whenever desired. He has evidently been communicating to certain newspapers official correspondence which they could not otherwise have obtained. He allowed himself, while under suspension, to receive at Noakhali (when it pleased him to return there for a few days) a public ovation, thereby lending himself to what was evidently intended to be a political demonstration. In short, he has continued the contumacious attitude which has signalized his relations to Government throughout these proceedings.

24. The conclusion at which the Lieutenant-Governor arrives is that Mr. Pennell is an officer so deluded by a morbid and sometimes malignant vanity, which has become the irreclaimable habit of his character, that he can no longer be employed to the advantage of Government in any judicial or executive post. Dismissal from the service of Government is, His Honour thinks, rightly reserved for cases of moral depravity, but, on a consideration of the whole of his official history, he is constrained to recommend that Mr. Pennell be removed from the public service, and retired on such a compassionate allowance as the Government of India may think right to grant

to him. He sees no reason to suggest a proportionate pension, which would be equivalent to an admission that that officer's service throughout has been of a satisfactory character.

I have, &c.,

(Signed) C. E. BUCKLAND,

Offg. Chief Secy. to the Govt. of Bengal.

Annex No. 1.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

CRIMINAL REVISIONAL JURISDICTION.

The 1st July, 1898.

PRESENT :

The Honourable Mr. Justice O'Kinealy and the Honourable Mr. Justice Henderson, two of the Judges of this Court.

BARODA NATH BHATTACHARJEE ... ... *Petitioner*,

versus

KERAIT SHEIKH ... ... *Opposite party.*

For petitioner—Mr. Hill and Babus Prosonno Gopal Roy and Dasarathi Sanyal.

In this case an application was made to this Court to exercise its revisional jurisdiction in regard to an order passed by the Sessions Judge of Mymensingh, dated the 4th May last.

The applicant was charged and acquitted before the Deputy Magistrate of that district of offences under sections 342, 347 and 384 of the Indian Penal Code. The complainant was not satisfied, but sought the interference of the Magistrate, who declined to refer the case to this Court. He then went to the Sessions Judge, and the Sessions Judge in a very long and elaborate proceeding, for it is not a judgment, decided that the proper course would be for the Government to appeal to this Court. But the Government would not appeal, and he thought there was no use in his sending the case up to this Court, because it would not be effectual. He, therefore, undertook himself to set aside the original order of acquittal passed by the Deputy Magistrate, and directed the applicant to be committed to the Sessions. That is of course a power which he does not possess, and the only order that we can pass in this matter is to direct that the order of the Sessions Judge be set aside as without jurisdiction.

The order therefore is set aside.

At the same time, we direct the Registrar to expunge all portions of the judgment of the Sessions Judge in regard to the conduct of the Government and of the Magistrate and Deputy Magistrate.

J. O'KINEALY.

G. HENDERSON.

Annex No. 2.

Letter from J. E. Phillimore, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side; to A. P. Pennell, Esq., late Sessions Judge of Saran, Noakhali. No. 1,247, *dated Calcutta, the 20th March*, 1900.

I AM directed to say that the Court has had under its consideration the judgments delivered by you in the marginally-noted cases while you were officiating as Sessions Judge of Saran.

HIGH COURT.

ENGLISH DEPARTMENT.

[*Criminal.*]

PRESENT :

The Full Court.

(1.) Sheonandan Singh and others (Appellants) *v.* Queen-Empress, decided 2nd October, 1899.

(2.) Narsingh Singh (Appellant) *v.* Queen-Empress, decided 7th October, 1899.

2. I am to direct your attention to the following passage which occurs in the first of those judgments: "The survey dispute on which the prosecution rely was apparently a dispute before a kanungo or similar authority, who for a few rupees would make out that black was white."

3. I am to point out that a Judicial officer is not warranted in making any imputation against the character of any person in the course of judicial proceedings, unless some substantial ground, arising out of the proceedings, existed for his doing so. Still less is he justified in making a general imputation against a whole body of public servants at random, and unnecessarily for the

purposes of the case, as was apparently done by you in the instance in question. Your remark was not directed against any particular officer or any particular instance of misconduct; it appears to have been casually suggested by a document which you had on formal grounds rejected as inadmissible in evidence.

4. With regard to the case of Narsingh Singh, I am to say that, assuming the substantial correctness of your findings on the facts, the Court is of opinion that certain passages in your judgment are expressed in terms which the Judges regard as intemperate and conspicuously wanting in that sense of dignity and self-restraint which ought to characterise all judicial utterances.

5. I am to remind you that the Court has on a previous occasion had to direct that certain portions of a judgment recorded by you should be expunged from the record as intemperate in expression, and containing imputations which the learned Judges who dealt with the case considered improper and uncalled for, and I am to express the hope that it will not be necessary for the Court to admonish you again on the subject.

Annex No. 3.

Letter from Mr. Pennell to Sir John Woodburn, dated Noakhali, the 21st May, 1900.

I AM painfully aware that my past conduct has not entitled me to any consideration on your part, and fear that you may think it a piece of presumption for me to address you at all. But I hope you will allow me to say that I am sincerely sorry for my misbehaviour in the past, and am earnestly desirous of doing better in future. I feel that my judgment in the case of Narsingh Singh not only merited the censure which the High Court has bestowed upon it, but that it was wanting in charity, and that much else in my conduct has been even less defensible.

I hope, Sir, that you will sympathize with my wish to extricate myself from the situation in which I am now placed. It can hardly be your wish that any one of your officers should be left altogether without hope, or should sink to the level of a confirmed bad bargain. The post which I am now holding is one in which no Civilian of anything like my standing would be kept for any length of time, except as a punishment; and as the greater part of the duties are of a kind assigned elsewhere to Subordinate Judges, it is not possible for me to show by my work that I am fit for anything better. The strain upon me for several months past has been very great, and if I am kept here very much longer, I see only too much reason to fear that I shall *not* be fit for anything better.

That I have deserved punishment I cannot deny, but may I not, Sir, beg that you will not carry it beyond the point to which it is really necessary, and that if or when you are satisfied that I am not likely to offend again, you will give me a chance of retrieving my position?

Hoping that you will forgive me for intruding upon your time.

I am, &c.,

(Signed) A. PENNELL.

Annex No. 4.

Letter from Major Strachey to Mr. Pennell, dated Darjeeling, the 12th June, 1900.

THE Lieutenant-Governor desires me to acknowledge your letter of the 21st ultimo, and to express his regret that by an oversight it has not been answered earlier.

He is pleased to see that you now recognise that your judicial deliveries have been often wanting in dignity and impartiality, essentially, as you put it yourself, in charity, and he sincerely hopes that, as you say, the High Court will not have occasion to comment adversely upon them.

Your appointment to Noakhali was arranged, as the Lieutenant-Governor told you in December, long before he ever heard of the Chapra case. The arrears in Saran and Champaran had become so serious as to lead to correspondence with the High Court and to necessitate your appointment to a lighter charge.

The Collector of Noakhali has asked permission to return to the district on the expiry of his leave, and the Lieutenant-Governor cannot admit that the district is in any sense an undesirable one. One of your predecessors, Mr. Gun, remained there for many years at his own request. It would not be convenient to make any change at present, but the Lieutenant-Governor will bear your wishes in mind in the arrangements for next cold weather.

I am, &c.,

(Signed) J. STRACHEY.

Annex No. 5.

Letter from Mr. Pennell to Major Strachey, dated Noakhali, the 15th June, 1900.

I AM in receipt of your letter of the 12th instant, and shall be much obliged if you will inform the Lieutenant-Governor that I am very sensible of His Honour's kindness, and will do my best to deserve it.

I am, &c.,

(Signed) A. PENNELL.

Annex No. 6.

Letter from Mr. Pennell to Mr. Bourdillon, dated Noakhali, the 2nd December, 1900.

I WRITE to ask if there would be any objection to my taking casual leave, say three days, to go to Calcutta to meet my sister, who is due to arrive there on the 11th instant. My sister has never been in India before, and the journey here is not an easy one. I should esteem it a favour therefore if I could be given this leave.

The work in my Court I may say is well up to date. There are no Sessions cases pending, and as far as I can see my absence will cause no appreciable inconvenience to any one.

Yours, &c.,

(Signed) A. PENNELL.

Annex No. 7.

Letter from Mr. J. A. Bourdillon to Mr. Pennell, dated Calcutta, the 5th December, 1900.

THERE is no objection to your having three days' casual leave to Calcutta to meet your sister.

Yours, &c.,

(Signed) J. A. BOURDILLON.

Annex No. 8.

Letter from Mr. Pennell to Mr. Bourdillon, dated Calcutta, the 12th December, 1900.

I FIND on arriving at Calcutta that my sister's steamer, the *Parramatta*, instead of arriving yesterday as advertised, will not be in till to-morrow morning. Under these circumstances, I am constrained to ask you for casual leave till the end of this week. I might with a rush get to Noakhali in time for work on Saturday, but think myself that it is not worth while trying to do so.

Yours, &c.,

(Signed) A. PENNELL.

Annex No. 9.

Letter from Mr. Bourdillon to Mr. Pennell, dated Calcutta, the 12th December, 1900.

CERTAINLY stay as you propose.

Yours, &c.,

(Signed) J. A. BOURDILLON.

Annex No. 10.

Letter from Mr. E. P. Chapman to Mr. Pennell, dated Calcutta, the 25th December, 1900.

THE Judges are informed that you obtained leave from the Chief Secretary to come to Calcutta for the 12th December last: you were to have returned to your station on the 15th, and the Chief Secretary understood that you did so. The Judges desire to know when you

left Calcutta and upon what date you returned here, and also from whom you obtained leave to quit your station again, or to remain on in Calcutta, if you did so. I am to ask for an early reply.

Yours, &c.,

(Signed) E. P. CHAPMAN.

Annex No. 11.

Letter from Mr. Pennell to Mr. Chapman, dated Hotel Continental, Calcutta, the 26th December, 1900.

I AM in receipt of your demi-official of yesterday's date. I obtained three days' casual leave from the Chief Secretary to meet my sister, who was due to arrive in Calcutta on the 11th instant. As her steamer was late, I was obliged to apply for casual leave for the rest of the week, which was granted. I left Calcutta on the 15th instant (a day earlier than I need have done) for Noakhali. I returned to Calcutta on the night of the 23rd instant. I did not obtain leave from any one to do so, as I did not consider it necessary. I have hitherto been under the impression that, except for the Pujas, it is not necessary for a Judge to obtain leave to absent himself from his station during authorized holidays, and this impression was confirmed by the result of some correspondence which I had with you in July, 1899, and to which I would solicit a reference. I may add that I came to Calcutta similarly for the Christmas holidays in 1898 and 1899, but no questions were asked about it, and it is my belief that a great many other Judges are at present in Calcutta without any other authorization than exists in my case.

As the Courts are closed, I could not work even if I were at Noakhali, but I may say that, even apart from that, the state of my file is not such as to necessitate my remaining at Noakhali. I would solicit a reference to the returns for the September quarter, which will show that the work is well up to date. I may also add that with one trifling exception not a single order of mine has been reversed or modified by the High Court during the whole time I have been at Noakhali. I would submit that neither the quantity nor the quality of my work has been such as to call for any specially rigorous treatment on the part of the Court. And I would point out that it would be particularly hard if I were denied the indulgence (if it be an indulgence) of coming to Calcutta this Christmas, as I have my sister with me and would like her to see the gaieties which go on here at this season. It is true that I have recently had casual leave, but it was for a domestic reason, and it is the first time in more than 14 years' service that I have ever asked for leave for such a reason. It may perhaps be the belief of the Judges that I remained on in Calcutta after the 15th. I have already stated that this is not so. If such an erroneous impression led to your letter, the Judges will not perhaps be offended at the request which I now make. It is my intention to apply to the Chief Secretary for casual leave for the 2nd January to enable me to attend Mr. S. C. Mukherji's wedding, which is fixed for the 1st instant, and I should be obliged if the Hon'ble Judges will intimate that they have no objection to my having it.

Yours, &c.,

(Signed) A. PENNELL.

P.S.—I enclose copies of the correspondence between myself and the Chief Secretary with reference to my casual leave.

A. P. P.

Annex No. 12.

Telegram from Mr. Pennell, Birbbum, to High Court, Calcutta, dated the 29th December, 1900.

SOLICIT that orders on my demi-official may be sent to Hotel Continental to await my arrival to-morrow.

Annex No. 13.

Letter from Mr. Pennell to Mr. Buckland, C.I.E., dated Hotel Continental, Calcutta, the 31st December, 1900.

I WRITE to ask if I may have casual leave for the 2nd January. I want to attend the wedding of Mr. S. C. Mukherji, whom I have known from a boy, on the 1st January ; and as there is only one mail to Chandpur, which leaves very early in the morning, I cannot do this without exceeding the authorised holidays.

Yours, &c.,

(Signed) A. PENNELL.

Annex No. 14.

Letter from Mr. Buckland to Mr. Pennell, dated Calcutta, the 31st December, 1900.

YOUR letter of to-day just received asking for casual leave for the 2nd January.

Please let me know why you have not applied before. To be back for your work on the 2nd, I suppose you would have to start by the very early train on the 1st, and at present I do not understand why you should have put off till the afternoon of the 31st December to ask for casual leave for the 2nd January. Have you only just received an invitation, or did you not intend until this afternoon to ask for it?

Also please let me know if you start from here on the early morning of the 2nd, at what time ought you to reach Noakhali? Shall you be in time to hold Court on the 3rd, and for how long?

Yours, &c.,

(Signed) C. E. BUCKLAND.

Annex No. 15.

Letter from Mr. Pennell to Mr. Buckland, C.I.E., dated Hotel Continental, Calcutta, the 31st December, 1900.

THE enclosed correspondence which has passed between myself and the High Court will show how it is I have not applied for casual leave for the 2nd January before. The expression "The Judges" denotes Mr. Justice Rampini only. Mr. Ghose, who is a member of the English Committee, expressed to me great surprise at Mr. Rampini's action. Mr. Rampini has not replied either to my letter or telegram. I cannot compel him to reply. He has against me a private grudge of long standing in connection with a syndicate into which he entered for promoting a tea company.

(2.) I have all along intended to apply for the casual leave. I received invitations, both formal and informal, long ago. I am an intimate friend of the bridegroom and his uncle, Mr. P. L. Roy, and have known the bride's people for years.

(3.) If I start from here on the early morning (5h. 7 a.m.) of the 2nd, I reach Feni at 1.58 a.m. on the 3rd. Starting from there at dawn, I reach Noakhali at, say, 10.30 a.m. on the 3rd, in time to hold Court on that day for as long as most Judicial officers sit. I am sorry to have given *you* so much trouble in the matter, but you will see it is not my fault

Yours, &c.,

(Signed) A. PENNELL.

Annex No. 16.

Letter from Mr. Buckland to Mr. Pennell, dated Calcutta, the 1st January, 1901.

IN reply to your second letter of yesterday, you may have casual leave for the 2nd, *i.e.*, you may remain in Calcutta for Mukherji's wedding on the 1st, and I must ask you to leave Calcutta by the early morning train of 2nd, so as to be back at Noakhali for Court on the 3rd.

I return your letters.

Yours, &c.,

(Signed) C. E. BUCKLAND.

Annex No. 17.

Letter from Mr. Pennell to Mr. Buckland, C.I.E., dated Noakhali, the 3rd January, 1901.

IN order to save you the trouble of having to communicate with me again upon the subject, I write to say that I reached Noakhali at 10.4 a.m., Calcutta time, and that I am now (12 noon, Calcutta time—11.27 Railway time) in Court. As it so happened, I walked to Court with the Collector, so that we both attended office almost simultaneously.

I may, perhaps, be permitted to add that the mail steamer of the 1st grounded, and in consequence the passengers for places beyond Chandpur had to proceed by the same train as myself. Even, therefore, if I had not been allowed casual leave for the 2nd instant, I

could not have got to Noakhali any sooner. I have received no reply to my letter or telegram to High Court.

Again apologising for giving you so much trouble.

Yours, &c.,

(Signed) A. PENNELL.

Annex No. 18.

Letter from Mr. Buckland to Mr. Pennell, dated Calcutta, the 26th January, 1901.

I OUGHT to have written to you before about a passage in a letter of yours, dated the 31st December, to me, but it escaped my notice (after I gave you the leave you wanted), and has only just now turned up again.

You wrote : " Mr. Rampini has not replied either to my letter or telegram. I cannot compel him to reply. He has against me a private grudge of long standing in connection with a syndicate into which he entered for promoting a tea company."

This is an imputation of motive which ought not to be made against any one, and certainly not against a Judge of the High Court, as a reason for his dealing with an official matter in a particular way. Before taking any action on the subject, I think it right to give you an opportunity of withdrawing this passage, if you desire to do so. If you prefer to let it stand, it will be my duty to bring it to Mr. Rampini's notice.

Please at the same time forward to me a copy of the letter and telegram referred to in this passage of your letter of 31st December.

Yours, &c.,

(Signed) C. E. BUCKLAND.

Annex No. 19.

Telegram dated the 29th January, 1901, from Sessions Judge, Noakhali, to Chief Secretary, Calcutta.

PLEASE wire whether your demi-official of 26th was written by order of Government.

Annex No. 20.

Telegram from Sessions Judge, Noakhali, to Chief Secretary, Calcutta, dated the 31st January, 1901.

PLEASE wire whether you have received my telegram of 29th concerning your demi-official of 26th.

Annex No. 21.

Circular No. 1A., from Mr. Buckland, C.I.E., Officiating Chief Secretary to the Government of Bengal, to all District and Sessions Judges and Additional District and Sessions Judges and the Judicial Commissioner of Chota Nagpur, dated Calcutta, the 14th February, 1901.

AS it has come to the Lieutenant-Governor's notice that doubts exist as to the proper course to be adopted by District and Sessions Judges and Additional Judges who may desire to be allowed what is termed casual leave (*i.e.*, leave not granted under the Articles of the Civil Service Regulations, and not reported to the Accountant-General), so that the practice varies and irregularities have occurred, I am directed to inform you that His Honour is pleased; with the approval of the Honourable Judges of the High Court, to lay down the following rules which have been framed, *mutatis mutandis*, in accordance with the orders in force in the Executive branch of the Government service, as follows :—

(1) Casual leave can only be allowed consistently with the requirements of the public service.

(2) Casual leave not exceeding ten days, inclusive of any gazetted holidays falling within the period of absence, may be granted by Government on application to the Chief Secretary.

(3) An application to the Chief Secretary must be made in time for an answer by post to reach the applicant before he proposes to leave his station.

(4) A Judicial Commissioner or District Judge or Additional Judge is not allowed to be absent from his station on or before or after a gazetted holiday, unless he has obtained permission from the Chief Secretary before he leaves it.

Annex No. 22.

IN THE COURT OF THE SESSIONS JUDGE OF NOAKHALI.

PROCEEDINGS UNDER SECTION 477 OF THE CRIMINAL PROCEDURE CODE.

EMPEROR *versus* REILY.

IN the course of the Sessions trial of Empress *versus* Sadak Ali and three others decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered, that Mr. W. Y. Reily, Superintendent of Police of this district, has committed offences under sections 193, 466 and 471 of the Indian Penal Code, and that it is my duty to hold an enquiry preliminary to committing him to the High Court to be tried for those offences.

Mr. Reily was yesterday arrested and committed to jail; there was then no time, owing to the lateness of the hour, to draw up this formal proceeding. He will be produced before me, as directed in the warrant on the 25th February, when evidence will be taken.

(Signed) A. PENNELL,
Sessions Judge.

The 16th February, 1901.

Memo. by Mr. Pennell, Sessions Judge, Noakhali, No. 57, dated Noakhali, the 16th February, 1901.

COPY forwarded to the District Magistrate of Noakhali for information.

Annex No. 23.

EMPEROR *versus* REILY.

THE accused was arrested yesterday as per order (No. 25, dated 15th February, 1901), recorded in Sessions trial No. 1 of 1901. Formal proceeding was not drawn then owing to the lateness of the hour, but all necessary information was given in the judgment delivered in open Court, the reading of which lasted till past 6 p.m.

This day formal proceeding has been recorded. The case is fixed for enquiry on the 25th February. Direct the District Magistrate to instruct the Government Pleader to appear for the Crown and to summon Babu Ishan Chandra Sen, Babu Chandra Mohan Roy (who sat as Assessors during the trial and visited the spot), Babu R. K. Aich, Mr. J. A. Ezechiel, Joint Magistrate of Mymensingh, and Mr. R. A. D. Bignell, Deputy Inspector-General of Police. The Government Pleader can in due course apply for process against any other witnesses.

(Signed) A. PENNELL,
Sessions Judge.

The 16th February, 1901.

Memo. by Mr. Pennell, Sessions Judge, Noakhali, No. 58, dated Noakhali, the 16th February, 1901.

COPY forwarded to the District Magistrate of Noakhali for information and guidance.

The Government Pleader should be instructed and the witnesses named in the order should be summoned.

Annex No. 24.

IN THE COURT OF THE SESSIONS JUDGE OF NOAKHALI.

Order passed on the application of W. Y. Reily, praying for bail.

THIS application was handed to me about 6 P.M. yesterday, but I declined to take it then. When I was leaving Court yesterday a disgraceful incident occurred. Mr. Cargill, the District Magistrate, accompanied by his wife, waylaid me and attempted to procure Mr. Reily's release on bail. District Magistrate is the nominal prosecutor. Mr. Cargill's procedure during this trial has been so outrageous that I had to send the Government Pleader to him to inform him that if he did not desist, I should have to punish him summarily under section 228, Indian Penal Code. This morning he has sent me a letter (No. 347, dated 16th February, 1901), intimating that Mr. Reily has been suspended. He

has not, however, intimated that Osman Ali, the Sub-Inspector of the Sadar thana, has been suspended, or that any action has been taken against other police officers concerned. The Government Pleader states that he has been instructed by the District Magistrate to inform me that the District Magistrate has received a telegram from Government suspending Mr. Reily. The reason of the extraordinary solicitude of the Crown on behalf of Mr. Reily does not appear. I have noted in my judgment that the Executive authorities have endeavoured to intimidate me with a view to preventing proceedings against Mr. Reily. The fact is that they are all bent on screening their subordinate.

I think it unsafe to release Mr. Reily on bail, whether suspended or not, so long as Mr. Cargill remains in charge of the District or Osman Ali (in whose hands Mr. Reily is a mere tool) in charge of the thana in which I am living and holding Court, and in which most of his witnssses and Mr. Reily are living. There has been too much intimidation by the Executive already.

One of the sections under which Mr. Reily is charged is non-bailable : it is a matter of judicial discretion whether I should grant bail.

In the exercise of that discretion, I decline to grant bail until the Executive administration of this district is in other hands.

(Signed) A. PENNELL,

Sessions Judge.

The 16th February 1901.

Annex No. 25.

19th February 1901.—The Government Pleader files a petition for copy of the order rejecting Mr. Reily's application for bail. He is unable to say why the District Magistrate wants this copy. In the absence of such information, I must decline to supply it. The District Magistrate is in theory the prosecutor, and cannot be allowed to conduct the defence as well.

The Government Pleader also states verbally that he has been directed by the District Magistrate to apply for copies of all papers in which he is named. Mr. Cargill is at liberty to apply for these copies in his private capacity, or to assist the defence in his private capacity ; but I cannot allow him to use his official position for the latter purpose. My comments upon him in the judgment are practically to the effect that he has abused his official position for his private purposes. I have censured, not the District Magistrate, but Mr. Cargill. If Mr. Cargill wants copies of my censures, or of the judgment for his private purpose, he must apply for them as a private person, and pay the usual cost, and if he makes the application through a pleader, that pleader must file a vakalatnama from Mr. Cargill himself. Let the District Magistrate be informed accordingly.

(Signed) A. PENNELL,

Sessions Judge.

Annex No. 26.

Letter from Mr. Pennell, District Judge of Noakhali, to The Chief Secretary to the Government of Bengal, No. 372, *dated Noakhali, the* 20*th February* 1901.

WITH reference to your Circular No. 1A, dated 14th February 1901, I have the honour to request that I may be granted casual leave for the period from 1st to 5th March, inclusive, of this period. The 1st and 2nd March are Census days, and I have been directed to suspend work on them ; the 3rd March is a Sunday ; the 5th March is an Executive as well as a Civil Court holiday, and only the 4th March is a working day.

2. I may be allowed to submit that I have been hard at work continuously, Sundays and all holidays included, ever since my return from Calcutta after the New Year.

3. If you are not, however, disposed to grant me this five days' casual leave, I request that under rule 4 you will give me permission to be absent from my station on the first three days of March.

Annex No. 27.

Letter from Mr. Pennell to Mr. Buckland, dated Noakhali, the 22*nd February* 1901.

I WRITE this to invite your attention to the fact that I have applied officially (by a letter No. 372, dated 20th instant) for casual leave for the period from 1st to 5th March,

and to ask for early orders thereon. If they have not issued already, I should be obliged if you would send them to me by wire. I know there is sometimes delay in putting up official letters, so I am now sending this. It did not occur to me on the 20th.

Yours, &c.,

(Signed) A. PENNELL.

Annex No. 28.

Letter from Mr. Pennell to Mr. Buckland, dated Noakhali, the 22nd February 1901.

I HAVE not replied to your demi-official letter of 26th January before, because I thought it desirable to give you an opportunity of stating that that letter was not written under orders of Government. As, however, you have not answered my telegrams, and it is for you and not for me to decide whether to answer them or not, you leave me no option but to comply with what I must take to be the discretion contained in that demi-official letter.

I therefore enclose copies of the letter and telegram referred to in the passage which you quote of my letter to you of the 31st December.

Yours sincerely,

(Signed) A. PENNELL.

Annex No. 29.

Letter from Mr. Buckland to Mr. Pennell, dated Calcutta, the 26th February 1901.

THANK you for the papers received with your letter of the 22nd February. I do not find among them any letter or telegram to Mr. Justice Rampini. In your letter of 31st December 1900, to me, you wrote: "Mr. Rampini has not replied either to my letter or telegram. I cannot compel him to reply." In my letter to you of the 26th January, I asked accordingly for a copy of the letter and telegram to Mr. Rampini referred to in this passage. The correspondence you have sent me was with Chapman, Bourdillon, and the "High Court;" no mention of Mr. Rampini. Please send me a copy of the letter and telegram to Mr. Rampini, or let me know if there were none.

I have again laid the papers before the Lieutenant-Governor, and I am to point out to you that in your letter of the 22nd February, you do not say whether you withdraw the passage quoted in the margin which, in my letter of the 26th January, I gave you an opportunity of withdrawing. Would you kindly let me have a line to say clearly whether you prefer to withdraw it or to let it stand?

"He (Mr. Rampini) has against me a private grudge of long standing in connection with a syndicate into which he entered for promoting a tea company.".

Yours, &c.,

(Signed) C. E. BUCKLAND.

Annex No. 30.

Telegram from Chief Secretary, Calcutta, to Mr. Pennell, Noakhali, dated the 27th February 1901.

YOUR application for casual leave was referred to the High Court, who consider that it should not be granted at present. The leave cannot therefore be granted.

Annex No. 31.

Letter from Mr. Pennell, District Judge of Noakhali, to the Chief Secretary to the Government of Bengal, No. 424, *dated Noakhali, the 28th February* 1901.

I HAVE the honour to inform you that I have received no reply by post to my letter No. 372, dated the 20th February, concerning my proposed absence from my station, although that letter would in the ordinary course have been delivered in Calcutta early in the morning of the 22nd February. I have, however, received yesterday two urgent telegrams couched in almost identical terms and sent off from different telegraph offices within three hours of each other. These telegrams refuse the first of my prayers, but contain no orders on the

second (contained in paragraph 3 of my letter). I have no time to communicate with you further, so am leaving for Calcutta for the three days in anticipation of sanction. I am of opinion that when I get there the High Court may perhaps think that the time for granting my first prayer has arrived.

2. I may point out that this is only a third class telegraphic station, and that an urgent telegram directing the release of an undertrial prisoner on bail, despatched by the Registrar of the High Court on the evening of the 20th, was not received here till 7 a.m. on the 21st, so that it appears useless for me to wire to you. Moreover, from the fact of your sending the same telegram twice, I think that probably you may have something of more importance occupying your thoughts, and I do not wish to give unnecessary trouble.

3. I may further add that I am in bad health owing to the strain referred to in paragraph 2 of my former letter, and that Dr. Charles's letter of 17th June last, of which a copy is enclosed, shows that in his opinion a river trip is just the thing for me ; while, as I have been forbidden to do any work on account of the census, my absence cannot possibly harm any one, especially as I have empowered the District Magistrate to grant bail. Moreover, I intend to combine business with pleasure by taking with me to Calcutta and making over to the High Court personally the record of the case of Empress *versus* Sadak Ali and others, which contains many exhibits which in my opinion are of great importance. In case His Honour may not have heard of this case, I take the liberty of enclosing a copy, certified by my Senior Munsif, of one of the exhibits (demi-official letter from Major Strachey, dated 12th June, 1900, and marked Exhibit X-28). I think it important that this and some other exhibits should be photographed properly before they pass out of my hands ; and I am not sure how the snapshots I have already had taken by an amateur will turn out.

4. Under these circumstances I trust that my conduct in anticipating formal sanction may be approved.

Annex No. 32.

Letter from Mr. Pennell to Mr. Buckland, dated Hotel Continental, Calcutta, the 2nd March 1901.

I WRITE to acknowledge your demi-official letter of 26th February concerning Mr. Rampini, and to request that Sir John Woodburn may be informed that I do not propose sending any further reply to that letter.

Yours, &c.,

(Signed) A. PENNELL.

Annex No. 33.

Letter from Mr. Buckland, C.I.E., Officiating Chief Secretary to the Government of Bengal, to the District Judge of Noakhali, No. 1480 *A.B., dated Calcutta, the 3rd March* 1901.

I AM directed to acknowledge the receipt of your letter No. 424, dated the 28th February 1901 (which reached me on the 2nd March). You had received my telegram of the 27th February, in which the Lieutenant-Governor, after reference to the High Court, had refused you the casual leave for which you had applied. You intimated that you had nevertheless left Noakhali for Calcutta in anticipation of sanction. The Lieutenant-Governor referred your letter to the Honourable Judges, and enquired whether it was their wish that you should remain in Calcutta. He has been informed that—

(*a*) it is not the wish of the High Court that you should stay in Calcutta ; and

(*b*) that in the opinion of the High Court you should be ordered to return to Noakhali at once.

2. I am to convey to you the Lieutenant-Governor's order that you leave Calcutta at once and return to your station, Noakhali. I am to request that you will be so good as to report to me the exact day and time at which you leave Calcutta and arrive at Noakhali.

Annex No. 34.

Letter from Mr. Buckland, C.I.E., Officiating Chief Secretary to the Government of Bengal, to the District and Sessions Judge of Noakhali, No. 1481 *A.B., dated Calcutta, the 4th March* 1901.

IN continuation of my letter No. 1480 A.B., dated the 3rd March 1901, I am directed by the Lieutenant-Governor to enclose for your information a copy of a letter No. 600, dated

the 4th March 1901, from the Officiating Registrar of the High Court, and of a Notification No. 1482 A.B., of the same date, suspending you from your office of District and Sessions Judge of Noakhali.

2. It appears from the enclosed letter that you have not yet obeyed the order communicated to you in my letter No. 1480 A.B., of the 3rd March 1901, directing your immediate return to Noakhali. You will proceed there at once, and await at Noakhali any further orders.

Annex No. 35.

Notification—By the Government of Bengal, Judicial Department. No. 1482 A.B., dated Calcutta, the 4th March 1901.

ON the recommendation of the Hon'ble the Chief Justice and Judges of the High Court, Mr. A. P. Pennell, District and Sessions Judge of Noakhali, is suspended from his office under section 26 of the Code of Criminal Procedure, and also under section 26 of Act XII. of 1887, the Bengal, North-Western Provinces and Assam Civil Courts Act.

Annex No. 36.

Letter from Mr. Pennell, Suspended Civil Servant, to The Chief Secretary to the Government of Bengal. No. 1—Suspension, dated Clarendon Hotel, Kurseong, the 11th March 1901.

WITH reference to your letter No. 1481 A.B., dated 4th March 1901, enclosing copy of Notification of the same date placing me under suspension, I have the honour to state that my address for the present will be Clarendon Hotel, Kurseong, and to request that the further orders mentioned in your letter may be sent there, or to such other address as I may hereafter indicate.

2. I have also to request that if there be no objection, I may be informed whether it is in contemplation to frame any charges against me, and whether I shall be allowed to submit any explanation or to be heard in my defence.

3. The favour of an early reply is solicited.

Annex No. 37.

Letter from Mr. Buckland, C.I.E., Offg. Chief Secy. to the Govt. of Bengal, to Mr. Pennell. No. 1872 A., dated Calcutta, the 13th March 1901.

I AM directed to acknowledge the receipt of your letter No. 1—Suspension, dated the 11th March 1901, from which it appears you have again disobeyed orders.

2. With regard to the second paragraph of your letter under acknowledgment, I am to say that the Government have at present no further information to communicate to you.

Annex No. 38.

Letter from Mr. Pennell, Suspended Civil Servant, to The Secretary of State for India in Council. (Through the Chief Secretary to the Government of Bengal.) No. 3—Suspension, dated Purnea, the 23rd March 1901.

I HAVE the honour to state that I am a member of the Covenanted Civil Service of India of 15½ years' standing, and that I was till recently District and Sessions Judge of Noakhali in the Lower Provinces of Bengal.

2. In my capacity as such I delivered on the 15th February last a judgment in a murder case in which I deemed it necessary to direct the prosecution for forgery and perjury of a European (or Eurasian) District Superintendent of Police named Reily; and as the Local Government had endeavoured during the pendency of this case to intimidate me, with a view to prevent my directing this prosecution, I thought it necessary to expose in my judgment the attempt made by Sir John Woodburn, the Lieutenant-Governor of Bengal, and by Lord Curzon of Kedleston, the Governor-General, to burke the case commonly known as the Chapra case, which formed the subject of certain questions by Lord Stanley of Alderley in the House of Lords on 14th May last. I also took occasion to denounce the sycophancy of the higher judiciary in this country, which alone renders such attempts on the part of the Executive authorities possible.

3. Mr. Reily was committed to jail on the 15th February. The Local Government applied to me on the 16th February to release him on bail, although the Crown is the nominal prosecutor, and although it was the case for the Crown in the murder trial that Mr. Reily was guilty of the crimes laid to his charge. This attempt failing, the Chief Justice of Bengal, Sir Francis Maclean, wired to me the following morning (a Sunday) through the Registrar of the High Court, enquiring why Mr. Reily's application for bail was refused, and urging me to carefully reconsider my order. Neither the Chief Justice nor the High Court had at that time been moved judicially on behalf of Mr. Reily, and I am confident that your Lordship's legal advisers will assure you that Sir Francis Maclean's action in sending me the telegram was an illegality of so flagrant a nature as to justify his being disbarred. I refused to do what Sir Francis Maclean wished, and the consequence was that Mr. Reily remained in jail till the 21st February, when he was released under telegraphic orders of the High Court.

4. On the 28th February, I left Noakhali for Calcutta with the records of the murder case, which contained numerous important exhibits vitally affecting the Lieutenant-Governor, and which, for that reason, I wished to make over to the High Court myself to secure that it should not be tampered with. Sir John Woodburn was so anxious that I should not do this that he sent two urgent telegrams within two hours of each other ordering me to remain in Noakhali, although the Courts were closed on account of the Census, and I could do nothing there. His anxiety only confirmed me in the belief that the course I was taking was necessary in the interests of justice, and I therefore proceeded to Calcutta with the record in spite of his telegrams, arriving on the night of the 1st March.

5. Till the morning of the 28th February, the record, a most voluminous one, had been in the Copying Department of my office, being copied for the accused and others entitled to copies. It was neither made up nor indexed, and to make it up would be a work of some days. Moreover, one of the accused had been sentenced to death, and under the Indian law it is necessary that when a Sessions Judge passes sentence of death, he should submit his proceedings with a letter of reference for the High Court's confirmation. No such letter has ever been written.

6. On the 2nd March my clerks and myself were engaged in making up the record. On the 3rd March, a Sunday, Sir Francis Maclean made a daring attempt to possess himself of the record extrajudicially. He sent a Mr. Chapman to my hotel to get it from me. This Mr. Chapman was then a private individual, but he had not long ceased to be Registrar of the High Court and it was not known to most people, and Sir Francis Maclean may have thought that it was not known to me that he was no longer Registrar. Your legal advisers will tell you that Sir Francis Maclean or the Chief Justice of Bengal (if it be assumed that he was acting officially) has no power to send for records in this way, and that his action was both illegal and improper. Mr. Chapman showed me an autograph letter from Sir Francis Maclean to himself directing him to get the record from me, but he would not give me the letter, or let me take a copy, and said he was not supposed to show it to me. He also admitted that he was no longer Registrar. As I raised objections to the informality of the whole proceeding, Mr. Chapman suggested (this was not in the letter) that if I could not trust him, I should make over the record to the Chief Justice himself. I thereupon showed him some of the more important exhibits, and said that before giving him any final answer, I would consult Mr. P. L. Roy, a leading Barrister of Calcutta, who is an intimate friend of mine. Mr. Chapman then went away. I myself went to see Mr. Roy, who advised me to go to Sir Francis Maclean's house, and make over the record to him there. I accordingly went with my clerks and the records to Sir Francis Maclean's but the latter, after keeping me waiting for a long time, sent me a note in the third person to the effect that the "Chief Justice of Bengal is unable to see Mr. Pennell, and desires that any communication which the latter may wish to make should be made to him through the Registrar of the High Court." My submission is that although Sir Francis Maclean wanted to get hold of the record surreptitiously, he did not want his getting hold of it surreptitiously to be known.

7. On the evening of the following day (4th March), I was suspended from my office by the Local Government by letter No. 1481 A.B. (copy annexed) "on the recommendation of the Hon'ble the Chief Justice and Judges of the High Court." It will be seen that no charges were framed against me, that I was not asked to furnish any explanation, and that no limit to the period of my suspension is indicated.

8. On the 11th March I addressed to the Chief Secretary to the Local Government a letter (No. I.—Suspension), of which a copy is annexed, enquiring whether it was in contemplation to frame any charges against me, and whether I should be allowed to submit any explanation or to be heard in my defence.

9. In reply, the Local Government informed me in their Chief Secretary's letter No. 1872 A., dated 13th March (copy annexed), that they have at present no further information to communicate to me.

10. I represented these facts to the Government of India in a letter (No. 2—Suspension), of the 18th March, of which a copy is annexed, and asked that Government might be pleased to direct the Local Government either to reinstate me without delay or to inform me what the charges against me are and to give me reasonable facilities for defending myself against such charges. I also asked that if the Government of India intended to reply at all, the reply might be sent me not later than 2 P.M. to day, so that I might, it necessary, communicate with you by this week's mail.

11. I have received no reply. Lord Curzon as well as Sir John Woodburn is implicated in my judgment, and I do not expect any justice from the authorities in this country. I therefore represent these facts for your information, and pray that you will be pleased to direct that I be at once reinstated, and that substantial amends be made to me for the way in which I have been treated for trying to do my duty as a Judge according to my lights.

12. I further beg that your Lordship will be pleased to communicate your orders by telegram to the local authorities, as unless I obtain satisfactory redress within 10 days of the time when the Calcutta mail of the 21st March is delivered in London, it is my intention to proceed to England without further delay, there to lay my grievances before the King in Parliament, and in particular before that House of Commons which represents people like myself.

13. A copy of this letter has been sent to you direct to save time. It is accompanied by the enclosures specified below :—

Enclosures.

1. Reprint of judgment in the Noakhali case.

2. Letter No. 1481 A.B., dated 4th March 1901, from the Officiating Chief Secretary to the Government of Bengal, with its enclosures (including copy of letter No. 600, dated 4th March, 1901), from the Officiating Registrar of the High Court.

3. Letter No. 1—Suspension, dated 11th March, 1901, to Chief Secretary to Government of Bengal.

4. Letter No. 1872 A, dated 13th March 1901, from Officiating Chief Secretary to Government of Bengal.

5. No. 2—Suspension. dated 18th March 1901, to Secretary to Government of India Home Department.

Annex No. 39.—**Reprinted in Appendix.** *Vide* page 165.

THE High Court Paper-book of the Criminal Bench Appeal, No. 173 of 1901, *in the case of* The King-Emperor, *Complainant, versus* Sadak Ali and others, *Accused.*

Annex No. 40.

Letter from Mr. Buckland, C.I.E., Officiating Chief Secretary to the Government of Bengal, to Mr. Pennell, I.C.S. No. 2676 *A., dated Calcutta, the* 2*nd April* 1901.

I AM directed to return herewith your memorial No. 3—Suspension, dated the 23rd March 1901, addressed to the Secretary of State for India in Council, and to request your attention to the enclosed copy of the Rules in force about the submission of memorials addressed to the Right Honourable the Secretary of State for India.

2. The Lieutenant-Governor regrets that under Rule XII. (2), he is unable to forward the memorial until the disrespectful and improper language contained in its paragraphs 2, 3, 6, and 11 is omitted from it. I am particularly to refer to the following expressions, viz.—

Paragraph 2.—"To expose in my judgment the attempt made by Sir John Woodburn, the Lieutenant-Governor of Bengal, and by Lord Curzon of Kedleston, the Governor-General, to burke the case" . . . . . "to denounce the sycophancy of the higher judiciary."

Paragraph 3.—"An illegality of so flagrant a nature as to justify his being disbarred."

Paragraph 6.—"A daring attempt to possess himself of the record extrajudically."

"That his action was both illegal and improper." . . . . . "wanted to get hold of the record surreptitiously, he did not want his getting hold of it surreptitiously to be known."

Paragraph 11.—. . . . . "Lord Curzon as well as Sir John Woodburn is implicated in my judgment, and I do not expect any justice from the authorities in this country."

3. Should you desire to submit a revised memorial addressed to the Right Honourable the Secretary of State for India, I am to request your attention to Rules II. and VIII. of the enclosed Notification.

Annex No. 41.

Letter from Mr. Sheepshanks, Officiating Registrar of the High Court of Judicature at Fort William, in Bengal, to the Chief Secretary to the Government of Bengal. No. 1,049, *dated Calcutta, the* 23*rd April* 1901.

I AM directed by the Chief Justice and Judges of the High Court to forward, for the information of His Honour the Lieutenant-Governor, copies of the judgments of Mr. Justice Ameer Ali and Mr. Justice Pratt in the case of Aslam and Anwar Ali and Sadak Ali *versus* The Emperor, with special reference to the observations of the learned Judges who heard the case upon the terms of Mr. Pennell's judgment.

HIGH COURT.
(*Criminal*)
PRESENT:
The Full Court.

2. I am also directed to say that when the Chief Justice and Judges recommended your Government on the 4th March last to suspend Mr. Pennell by reason of his insubordinate attitude towards the Court in refusing to hand over the record in the above case, they neither desired nor intended that the period of such suspension should be unlimited, and they are of opinion that the authority of the Court has been sufficiently vindicated and Mr. Pennell sufficiently punished for his contumacy above referred to by the suspension to which he has already been subjected.

Annex No. 42.—**Reprinted in Appendix.** *Vide* page 347.

JUDGMENTS, dated the 17th April 1901, of the Criminal Bench of the High Court (the Hon'ble Justices Ameer Ali and Pratt) in the case of Aslam, Anwar Ali, and Sadak Ali, *Appellants*, *versus* The Emperor, *Respondent*.

Annex No. 43.—**Reprinted in Appendix.** *Vide* page 356.

JUDGMENT, dated the 26th April 1901, of the Criminal Bench of the High Court (the Hon'ble Justices Ameer Ali and Pratt) in the matter of Mr. W. Y. Reily, Petitioner, *versus* The King-Emperor, Opposite party.

Annex No. 44.

Letter from Mr. Buckland, C.I.E., Officiating Chief Secretary to the Government of Bengal, to the Registrar, High Court. No. 3307 *A., dated Calcutta, the* 27*th April* 1901.

I AM directed by the Lieutenant-Governor to refer to your letter, No. 1049, dated 23rd April 1901, forwarding a copy of the judgment of the High Court in the case of Empress *versus* Sadak Ali and others, and stating that Mr. Pennell has been sufficiently punished by the period of suspension which he has undergone in respect of his conduct in refusing to hand over the records.

2. The Lieutenant-Governor has now before him the judgment of the High Court that Mr. Pennell's judgment in that case infringed every canon of judicial decorum and judicial propriety, and that he had taken an undue advantage of his position as Judge in order to vent his irritation upon all and sundry. He has also before him the judgment of the High Court of the 1st July 1898, in the case of Barodo Nath Bhattacharjee, Petitioner, *versus* Kerait Sheikh, in which the High Court directed that the order of the Sessions Judge be set aside as being without jurisdiction, and that all portions of the judgment of the Sessions Judge in regard to the conduct of Government and of the Magistrate and Deputy Magistrate be expunged. He has also before him the Registrar's letter to Mr. Pennell, No. 1247, dated 20th March 1900, in the cases marginally noted, in which Mr. Pennell was informed that a judicial officer is not warranted in making any imputation against the character of any person in the course of judicial proceedings, unless some substantial ground arising out of the proceedings existed for his doing so; still less is he justified in making a general imputation against a whole body of public servants at random, and unnecessary for the purposes of the case. The Court added its opinion that certain passages in Mr. Pennell's judgment in the case of Narsingh Singh were expressed in terms which the Judges regarded as intemperate and conspicuously wanting in that sense of dignity and self-restraint which ought to characterise all judicial utterances. The High Court reminded Mr. Pennell of the previous occasion on which portions of his judgment were expunged from the record as intemperate in expression and containing imputations which were improper and uncalled for.

(1) Sheonandun Singh and others, Appellants, decided 2nd October 1899.
(2) Narsingh Singh, Appellant, *versus* Queen-Empress, decided 7th October 1899.

3. The admonitions and censures of the Court have been without effect.

4. The Lieutenant-Governor has also had brought to his notice the judgment of the Court delivered on the 26th April in the case of Empress *versus* Reily, in which the Court have held that Mr. Pennell did not maintain a judicial balance of mind, and expressed the strongest disapproval of his illegal order in committing the accused to jail without the necessary preliminary enquiry.

5. In these circumstances, it appears to the Lieutenant-Governor that Mr. Pennell cannot be again placed in the office of Civil and Sessions Judge. But before giving effect to this opinion, he would be glad to be informed whether the Honourable Judges are in agreement with him.

6. The Honourable Court will understand that, pending final orders on Mr. Pennell's case, he must be retained under suspension.

Annex No. 45.

Letter from Mr. Sheepshanks, Officiating Registrar of the High Court of Judicature at Fort William in Bengal, to the Chief Secretary to the Government of Bengal, No. 1164, *dated Calcutta, the 7th May* 1901.

HIGH COURT.
ENGLISH DEPARTMENT.
Civil.
PRESENT.
The Full Court.

I AM directed to acknowledge the receipt of your letter No. 3370 A., dated April 27th 1901, enquiring whether the Judges are in agreement with the Lieutenant-Governor in considering that Mr. Pennell cannot be again placed in the office of Civil and Sessions Judge.

2. In reply, I am to say that, inasmuch as Mr. Pennell, in the opinion of the High Court upon the materials now before it, has shown himself unfit to discharge judicial functions, the Judges agree with His Honour the Lieutenant-Governor that he ought not again to be placed in the office of District and Sessions Judge.

THE BURMA PAPERS.

Annex No. 46.

Letter from the Chief Secretary to the Chief Commissioner of Burma, to the Commissioner of the Tenassarim Division, No. 363–6 c/12, *dated Burma, the 12th June* 1893.

I AM directed to acknowledge the receipt of your letter No. 82–11, dated the 5th instant, submitting, for the orders of the Chief Commissioner, papers connected with the proceedings of Mr. A. P. Pennell, Settlement Officer, Amherst, Tavoy and Mergui, in reference to Maung Tun Tha, Thugyi of the Mukyi circle of the Amherst district.

2. It appears that, on the 22nd March last, Mr. Pennell, being of opinion that Maung Tun Tha had wilfully disobeyed certain orders which had been given to him, and had for some time failed to render the assistance which he had a right to expect from him, called the Thugyi before him in the *zayat* at which he was staying, and threatened him that "if he went on behaving in this way he would give him a beating." Maung Tun Tha replied—in what Mr. Pennell describes as "a tone of mock humility"—"Yaikba," or "beat me?" Mr. Pennell thereupon, according to his own account, completely lost his temper, caught hold of the Thugyi, took the cord from his office box and tied his hands behind his back, and then took up his riding whip "and gave him, perhaps, as many as fifteen blows with it." On the same day Mr. Pennell gave the Thugyi a verbal order to appear before him at Kywegan village on the morning of the 25th March. On the 25th March Mr. Pennell arrived at Kywegan, and, finding that the Thugyi had left for Moulmein, issued a warrant for his arrest. The Thugyi was arrested and brought before Mr. Pennell on the 27th. To excuse his failure to appear before Mr. Pennell on the 25th March, the Thugyi produced an order from the Deputy Commissioner of the Amherst district, dated 24th March, requiring his immediate presence in Moulmein, and also an order, dated 25th idem, granting him two months' leave. Mr. Pennell thereupon recorded an order briefly reciting the facts stating that the Deputy Commissioner's order was only an executive order, whereas his own was issued in his capacity as a Civil Court, and ordering the Thugyi to pay a fine of Rs. 200 for "contempt of court," and "henceforward to remain in custody until his examination is completed."

3. The Thugyi petitioned the Deputy Commissioner, on the subject of this order, and the Deputy Commissioner in his capacity of District Judge reversed the order of fine and directed the refund of the money. As regards the beating, the Thugyi's father, pensioned Thugyi Maung Tu, presented a petition to the Deputy Commissioner, representing that his son had been cruelly beaten and put to shame in the presence of a large number of persons, and requesting that the matter might be enquired into. This petition has since been "disavowed" by the Thugyi himself, who states "that the beating was not so severe as was alleged, and that he has no desire to institute any criminal proceedings against Mr. Pennell."

4. Mr. Pennell, who has been called upon for an explanation of his proceedings as summarised in paragraph 2, after reviewing the facts, states, with regard to the assault on the Thugyi, as follows :—

"All that I can plead with reference to this is that I acted in the heat of passion under great provocation, and that the assault neither has had, nor was likely to have, any serious consequences." After recapitulating the annoyances to which he believes himself to have been subjected by the Thugyis of the Amherst district, he concludes : "All this does not, of course, justify the assault, however much it may extenuate it. That I regret the occurrence exceedingly it is perhaps unnecessary to add ; all that remains is to express my willingness (so far as such willingness is material) to make for my action such reparation or atonement as may be in my power and as it may seem that the circumstances of the case require."

As regards his proceedings in the matter of arresting the Thugyi, fining him Rs. 200 for contempt of court, and directing him to remain in custody till his "examination was completed," Mr. Pennell defends his conduct on the ground that under Revenue Department Notification No. 68, dated 19th June 1888, he as Settlement Officer possessed the powers of a Civil Court, maintaining that his orders were such as he had legal power to issue, and that they were rendered necessary by the conduct of the Thugyi.

5. The Chief Commissioner has carefully considered all the facts of the case and the explanation submitted by Mr. Pennell, and he regrets to have to record his opinion that Mr. Pennell's conduct throughout the affair has been wholly illegal and unjustifiable, and that his explanation is altogether unsatisfactory and shows a want of proper appreciation of the grave nature of the illegalities he has committed. Mr. Pennell's conduct in deliberately tying up the Thugyi with the rope of his office box and then severely beating him with his riding whip was such as no provocation could justify. His subsequent proceedings in directing the man's arrest, fining him Rs. 200 for "contempt of court," and directing him to be kept in custody "till his examination was completed," were from beginning to end absolutely illegal and improper, and it is a matter of surprise to the Chief Commissioner that an officer of Mr. Pennell's standing and reputed intelligence could seriously suppose that he was justified by law in the extraordinary proceedings he was so ill-advised as to adopt.

6. Mr. Pennell may congratulate himself that the Thugyi has abstained from taking criminal proceedings against him. He would have been perfectly justified in doing so, and appears to have acted with great forbearance in spite of the cruel and illegal manner in which he was treated. After the serious misconduct of which he has been guilty, and the extraordinary want of judgment which he has displayed, it is impossible to retain Mr. Pennell in the responsible position of Settlement Officer, or to place him in charge of a district, the position to which, as a Substantive Deputy Commissioner of the 4th grade, he would ordinarily be entitled. He will accordingly be reduced from Deputy Commissioner, 4th Grade, to Assistant Commissioner, 1st grade, and he will not be placed in charge of a district until he has shown himself fit for such a position. He will be removed from the Settlement Department as soon as his transfer can, with due regard to Government interests, be arranged, and he will be placed under a Deputy Commissioner, who will specially supervise his work and will submit a report upon it in twelve months' time for the information of the Chief Commissioner. Finally, Mr. Pennell will tender to Thugyi Maung Tun Tha a sum of Rs. 300 by way of amends for the ill-treatment to which he has been subjected at his hands.

7. The above orders, which are the most lenient that can be passed with due consideration to the gravity of the case, will involve a loss of pay to Mr. Pennell amounting to Rs. 650 monthly. The Chief Commissioner hopes that this punishment, and the expression of the Chief Commissioner's opinion on his conduct as contained in this letter, will be a severe lesson to Mr. Pennell for the rest of his service, and that for the future he will maintain better control over his temper and will show more care and intelligence in the exercise of such powers as may from time to time be conferred upon him.

8. A copy of this letter should be communicated to Mr. Pennell, and Thugyi Maung Tun Tha should be informed of the substance of the orders which the Chief Commissioner has passed in the case.

9. The original records received with your letter are herewith returned.

Annex No. 47.

Demi-official letter from Mr. Symes, C.I.E., Chief Secretary to the Chief Commissioner, Burma, to the Commissioner, Irrawaddy Division, dated the 3rd May, 1894.

MR. FRYER desires me to acknowledge the receipt of your demi-official letter No. 2,252-D.-2, dated 30th ultimo, and to say that if Mr. Pennell's conduct had been reported officially, he would have had no hesitation in at once reducing him to the rank of Assistant Commissioner. It would seem that Mr. Pennell began by flatly refusing to obey your very proper and repeated order that he was to re-open the Treasury and take

charge of it himself; that he then neglected, week after week, to submit the report which he himself had promised, and which you had repeatedly called for; and that he finally wrote you a demi-official letter in terms which can only be described as grossly impertinent. The Chief Commissioner must leave you to deal with the matter as you think proper. If you report the case officially, it will be dealt with officially. If, on the other hand, you can bring Mr. Pennell to see the error of his ways without the adoption of so extreme a measure as an official report, the Chief Commissioner will not be sorry to let this young officer have another chance as a Deputy Commissioner. Mr. Pennell is undoubtedly a gentleman of some ability. His chief failing appears to be his extraordinary conceit. You are at liberty to show him this letter if you so desire.

Annex No. 48.

Extract from a demi-official letter, dated 10th May, 1894, from Mr. G. E. L. Weidemann, Commissioner, Irrawaddy Division, to the Chief Secretary to the Chief Commissioner, Burma.

I WRITE to thank you for your demi-official letter of 3rd May 1894 on the subject of my difference with Pennell.

I have shown it to him, and talked the matter over to him. He has apologised, and I hope the incident is at an end. It is not my desire to proceed further. I trust that in future we shall get on. At the same time, though I like him much socially, officially he is inclined to be petulant.

Annex No. 49.

Letter from the Registrar, Court of the Judicial Commissioner, Lower Burma, to the District Magistrate of Thongwa, No. 1173—11, dated Rangoon, the 1st August 1894.

I AM directed to say that your letter No. 1504—1-77 P., dated the 27th July 1894, forwarding, through the Local Government, your explanation of the delay in obeying the instructions of the Judicial Commissioner, should have been submitted much earlier.

2. The explanation now submitted by you is unbecomingly expressed and does not contain such expressions of regret as might naturally have been expected.

3. The Judicial Commissioner has, however, accepted your statement that you have been lately much overworked, but he desires that it should be clearly understood that a much earlier and more careful attention to the orders of this Court will be expected of you in future.

Annex No. 50.—Printed as Annex 4, page 47.

Note by the Chief Commissioner of Burma, dated 26th October 1894.

Enclosure 2 in No. 1.

Letter from Mr. Buckland, C.I.E., Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, No. 124—A,D., dated Darjeeling, the 19th May 1901.

I AM directed to forward the enclosed memorial addressed to the Right Honourable the Secretary of State for India by Mr. A. P. Pennell, I.C.S., for the orders of the Government of India.

Dated the 29th April 1901.

2. The facts of the case are that Mr. A. P. Pennell, I.C.S., at that time District and Sessions Judge of Noakhali, was suspended from his office on the 4th March by this Government on the recommendation of the High Court, for the reasons given in their Registrar's letter No. 600 of that date, which forms one of the enclosures of the memorial. The Government of India were informed in my letter No. 2025—A, dated the 19th March 1901, that in His Honour's opinion the grounds on which the High Court recommended Mr. Pennell's

suspension amply justified the action which they recommended, and in your letter No. 2691, dated the 20th March 1901, this Government was requested to inform Mr. Pennell that the Government of India declined to interfere with the Lieutenant-Governor's orders.

3. The main contentions of Mr. Pennell's memorial are that no charges were framed against him by the suspending authorities, that he was not asked to furnish any explanation, and that no limit to the period of his suspension has been indicated. He is perfectly aware that he was suspended by the Local Government on the recommendation of, and on grounds stated by, the High Court, and the whole of his ninth paragraph is directed against the Local Government because they did not draw fresh charges against him. His statement that he had "neither notice nor knowledge of the proceedings of the High Court,"—whereas he had received a copy of the Registrar's letter No. 600, dated the 4th March,—is altogether incorrect. There is nothing in the sections of the Acts under which Mr. Pennell was suspended which requires the framing of any charges, and the Lieutenant-Governor considers that it was not open to him to question the recommendation made by the High Court, or to refuse to act upon it. No limit was placed by the High Court to the suspension of Mr. Pennell which they recommended. On the 24th April the High Court stated that in their opinion Mr. Pennell had been sufficiently punished, by the period of suspension which he had undergone, in respect of his conduct in refusing to hand over the records of a case to the Registrar, but they did not recommend his restoration to a Judgeship. They have since expressed their agreement with the Lieutenant-Governor that he should not be restored to a Judgeship, and in a separate letter the Lieutenant-Governor has made recommendations to the Government of India in regard to Mr. Pennell which entail his remaining under suspension until their orders have been received.

4. The circumstances detailed in paragraphs 10 and 11 are not within the cognizance of this Government, and it is unnecessary to offer any further comments on paragraph 12 than to say again that the Government of Bengal formulated no charges against Mr. Pennell, because the High Court's letter recommending his suspension contained the grounds on which the recommendation was made and rendered it unnecessary for this Government to do anything more than take the formal action of applying certain sections of the law.

5. Mr. Pennell was suspended on the 4th March. The appeal case (for the non-delivery of the records of which he was suspended) was not heard in the High Court until the 10th April. Judgment was delivered on the appeal on the 17th of April, and on Mr. Reily's case on the 26th idem. While these cases were pending, it was impossible for the Lieutenant-Governor to issue any further orders to Mr. Pennell. On the 27th April the Lieutenant-Governor addressed the High Court with reference to Mr. Pennell's fitness to be a Judge, and has now received their reply. It is not the duty of the Lieutenant-Governor to enter on any discussion with Mr. Pennell as to the grounds of the recommendation contained in the High Court's letter No. 600, dated the 4th March, 1901.

6. The facts are correctly stated in paragraphs 14 and 15 of the memorial, except that Mr. Pennell has omitted to mention that the memorial of the 23rd March, at the end of its 6th paragraph, contained in two places the objectionable word "surreptitiously" instead of the word "privately" which appeared in the memorial of the 21st March, as it was printed in the newspapers, to which it can have been communicated by Mr. Pennell only. As Mr. Pennell has in no way replied to my letter No. 2676, dated the 2nd April, which pointed out to him the disrespectful and improper passages contained in his memorial of 23rd March, it may be presumed that he admits the correctness of those epithets, though he has abstained from making any apology or expressing any contrition for the use of such language.

7. The incident of Mr. Pennell's suspension is only part of the whole case in regard to that officer, which is now before the Government of India in my letter No. 123—A.D., of this date.

Annex I.

To the Right Honourable the Secretary of State for India in Council.

THE MEMORIAL OF AUBRAY PERCIVAL PENNELL.

RESPECTFULLY SHEWETH,—1. That your petitioner is a member of the Covenanted Civil Service of India of 15½ years' standing, and that he was till recently District and Sessions Judge of Noakhali in the Lower Provinces of Bengal.

2. That on the evening of the 4th March last your petitioner was suspended from his office by the Local Government (Government of Bengal) by a letter No. 1481-A. B. (of which a copy is annexed) "on the recommendation of the Honourable the Chief Justice and Judges of the High Court" (of Fort William in Bengal). Your petitioner begs to point out that no charges were framed against him by the Suspending Authority, that he was not asked to furnish any explanation and that no limit to the period of his suspension has been indicated.

3. That under the rules laid down by the Government of India even the most humble servants of Government are entitled, before any proceedings are taken to their detriment, to be informed of the charges against them and to be heard in their defence: and your petitioner submits that, even apart from departmental rules, such a procedure is required by principles of natural justice.

4. That your petitioner further ventures to submit that if there be any one servant of Government who more than another should be protected against summary treatment of the kind meted out to your petitioner, it is a Judge who has to try his fellow subjects for their lives: and that in the case in connection with which your petitioner was suspended, he had actually passed sentence of death.

5. That on the 11th of March your petitioner addressed to the Chief Secretary to the Local Government a letter (No. 1 Suspension) (of which a copy is annexed) enquiring whether it was in contemplation to frame any charges against him, and whether he would be allowed to submit any explanation or to be heard in his defence.

6. That in reply the Local Government informed your petitioner in their Chief Secretary's letter No. 1872, dated 13th March (copy annexed) that they have at present no further information to communicate to him.

7. That your petitioner represented these facts to the Government of India in a letter (No. 2 Suspension) of the 18th March (of which a copy is annexed), and asked therein that that Government might be pleased to direct the Local Government either to reinstate him without delay or to inform him what the charges against him were and to give him reasonable facilities for defending himself against such charges.

8. That at 4.45 p.m., on the 21st March your petitioner received through the Local Government a copy of a letter (No. 2691, dated 20th March, 1901) from the Government of India, in which that Government intimate that they decline to interfere with the orders passed by the Government of Bengal.

9. That in the said letter the Government of India have referred your petitioner for the reasons for his suspension to the High Court's letter to the Government of Bengal (No. 600, dated the 4th March 1901) a copy of which was enclosed with the order suspending him. That your petitioner submits that he is in no way concerned with the reasons which the High Court may have given to the Local Government for their recommendation—that he had neither notice nor knowledge of the proceedings of the High Court—and that he was employed and has been suspended from his employment not by the High Court but by the Local Government. He submits that he was entitled to know as soon as suspended what charges were made against him by that Government and what the evidence was in support of those charges, and that he should have been given a hearing before being condemned.

10. That as it now appears from the letter of the Government of India that the charges on which your petitioner has been suspended by the Local Government are identical with the reasons put forward in the High Court's letter recommending his suspension, your petitioner ventures to emphatically deny that he was guilty of any contempt or that he was unwilling to deliver up the record therein referred to. That he refused to deliver it has not been stated even by the High Court. That your petitioner was not only willing but anxious to make over the record will appear from his bringing it to Calcutta, where it arrived long before it would otherwise have done owing to that action of his, and from the fact that having been informed by Mr. Chapman, an ex-Registrar of the High Court then on leave, on Sunday, the 3rd of March, that the Chief Justice wanted the record, he went with it that very afternoon to the Chief Justice's house, with the object of making it over, although the Chief Justice had sent for it in an informal manner, and although (owing to its having been from the 16th to the 28th February in the Copying Department of your petitioner's office in charge of your petitioner's Senior Gazetted Subordinate for the purpose of preparing the copies applied for by the condemned men) there had been no time to make it up, nor had my letter of reference been written as required by law in capital sentence cases. That your petitioner's anxiety to make over the record will further appear from the fact of his remaining on at Calcutta on the 4th March in spite of a peremptory order which he received from the Local Government on the night of the 3rd to return to Noakhali at once. That if your petitioner had complied with that order he would have had to leave Calcutta at 5.57 A.M. on the 4th and would have had no option but to take the record with him, but knowing as he did that the Chief Justice wanted the record, he thought it his duty to remain with it in Calcutta. As, however, the Chief Justice had refused to see your petitioner when your petitioner went to his house to make it over to him, your petitioner determined to apply officially to the Registrar for the High Court's instructions and in support of this application to file affidavits by his sister and clerks as to Mr. Chapman's visit and the incidents which occurred at the Chief Justice's house. That your petitioner on the morning of the 4th accompanied his sister and clerks to the High Court, but that the Deputy Registrar refused to take their affidavits. That your petitioner then tried to get the affidavits sworn at Alipur (a suburb of Calcutta) and was proceeding there with his sister when he was intercepted at his hotel by Messrs. Chapman and Sheepshanks. That he asked these gentlemen to wait till his return in an hour's time, but that Mr. Sheepshanks insisted on making over a letter to him at once. That your petitioner did not read or even open the letter then, but hastened to join his sister, who is newly arrived in this country and ignorant of the language, and whom he had left in a hired carriage in the middle of the road at a distance from his hotel while he hurried back there to see what had become of his clerks. That it was not till after he had joined her and was driving to Alipur that your petitioner read the letter and found out what it was. That it would have taken (as it actually did take) several hours to make over the records, even with the assistance of your petitioner's clerks, who were then on their way to Alipur, and that your petitioner thought that Mr. Sheepshanks, who was not long ago his subordinate (having been Assistant Magistrate of Bettiah in 1899 when your petitioner was Judge of Chapra) and is very much junior to him, would have waited for an hour as asked by your petitioner, especially as there was a lady in the case ; but it appears that he and Mr. Chapman (who was then a private person and seems to have come as a witness only) went straight to the High Court and presumably informed that body that your petitioner was unwilling to deliver up the record—and that in the course of the next two or three hours your petitioner was condemned unheard first by the High Court and then by the Local Government.

11. That the High Court was closed on the 5th March and that your petitioner made over the record the moment it re-opened on the 6th. He submits that he cannot be said to have disobeyed an order of which he was ignorant, and although it is a technical point, he thinks himself justified in calling attention to the fact that the order calling for the record was not sealed, presumably owing to its having been issued in a hurry. Your petitioner, although he was perfectly willing to comply with it, may yet venture to submit that it was not a valid order.

12. That your petitioner submits that it is hardly fair to him that he should be called upon to make his defence before he is accused and before he knows what Messrs. Chapman and Sheepshanks have said against him. That your petitioner is ready and anxious to answer any charge of "contempt" as soon as he is informed what act of his is said to have constituted the contempt. Your petitioner submits that he should have been informed at the outset what the Government of Bengal charged him with, and what evidence there was in support of that charge, and that the very earliest opportunity should have been given him of refuting it. He has made any statement at all as to the events of the 4th of March only in order to show that his alleged unwillingness to make over the record, which is the only tangible ground assigned in the High Court's letter, is on the face of it untenable.

13. That nearly two months have elapsed since your petitioner's suspension, but that the "further orders if any" indicated in the Local Government's letter suspending him have not issued, nor has your petitioner been given any opportunity of refuting the charges contained in the High Court's letter.

14. That on the 23rd March your petitioner submitted to Your Lordship through the usual channels a memorial (No. 3 Suspension) of which he had sent a copy direct to Your Lordship on the 21st March. That this latter copy was written before receipt of the Government of India's letter dated the 20th March.

15. That this memorial has been returned to your petitioner by the Local Government under cover of a letter of the 2nd April (No. 2676 from Chief Secretary, copy annexed) received by your petitioner on the 6th April. In this letter the Lieutenant-Governor intimates that he regrets he is unable to forward the memorial until certain language which he describes as disrespectful and improper is omitted from it, and has also called your petitioner's attention to the fact that the separate pages are not signed by your petitioner, as required by departmental rules, nor is the memorial accompanied by a forwarding letter.

16. That your petitioner has therefore prepared the present memorial which he hopes will be found free from the defects indicated or any other defects.

17. That he prays:

1. That Your Lordship will order the Governments concerned to at once reinstate him in his office.

2. That Your Lordship will be pleased to compensate him for the treatment to which he has been subjected.

3. That the orders which Your Lordship may pass upon this memorial may be communicated to the Government of India by telegraph and that that Government may be directed to inform your petitioner of them without delay.

HOTEL CONTINENTAL, CALCUTTA,
The 29th April 1901.

(Signed) A. PENNELL.

Annex No. 2.—Already printed as Annex No. 34, page 27.

Annex No. 3.—Already printed as Annex No. 35, page 28.

Annex No. 4.

Letter from R. Sheepshanks, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, to the Chief Secretary to the Government of Bengal, No. 600, *dated Calcutta the 4th March* 1901.

I AM directed by the Chief Justice and the Judges of this Court to request you to immediately lay the following matter before His Honour the Lieutenant-Governor.

2. From a Sessions statement submitted by Mr. A. P. Pennell, the Sessions Judge of Noakhali, it appeared that three persons named Sadak Ali, Anwar Ali, and Aslam had been convicted by Mr. Pennell on the 15th February last of murder under section 302 of the Indian Penal Code, one of whom, namely Sadak Ali, had been sentenced to death. This morning the proceedings not having been submitted by Mr. Pennell under section 374 of the Code of Criminal Procedure, and the Criminal Bench having been informed by the Registrar that the record of the case is now in Calcutta in the possession and custody of Mr. Pennell, the Judges sitting on the Criminal Bench issued an order that Mr. Pennell do make over and deliver the entire record forthwith to Mr. Sheepshanks, the Officiating Registrar, who was authorised by the Order to receive the same.

3. I am directed to say that Mr. Sheepshanks, accompanied by Mr. Chapman, went to the Hotel Continental this morning to call upon Mr. Pennell to carry out the order of the Court. Mr. Sheepshanks and Mr. Chapman saw Mr. Pennell at the hotel at a quarter past one to-day, and Mr. Sheepshanks delivered to Mr. Pennell the proceeding directing him to deliver over the record in accordance with the order issued by the Criminal Bench. Mr. Pennell treated the proceeding with contempt, declined to reply to it, and did not hand over the record to Mr. Sheepshanks.

4. I am directed by the Chief Justice and the Judges of this Court, who are of opinion that Mr. Pennell's behaviour in this matter amounts to gross insubordination and to misconduct within the terms of section 26 of the Code of Criminal Procedure, 1898, to recommend that the Local Government, in the exercise of the powers conferred upon it by the terms of the section, do immediately issue an order for Mr. Pennell's suspension, and to request that the Court may be at once informed of such orders as may be issued on this letter.

5. I am directed to recommend that an order issue also under section 26 of the Bengal, North-Western Provinces and Assam Courts Act, 1887, suspending Mr. Pennell from his office as District Judge.

Annex No. 5.—Already printed as Annex No. 36, page 28.

Annex No. 6.—Already printed as Annex No. 37, page 28.

Annex No. 7.

Letter from Mr. A. P. Pennell, Suspended Civil Servant, to the Secretary to the Government of India, Home Department (through the Chief Secretary to the Government of Bengal), No. 2 *Suspension, dated Hotel Continental, Calcutta, the* 18*th March* 1901.

I have the honour to state that I am a member of the Indian Civil Service of over 15 years' standing, and was till lately District and Sessions Judge of Noakhali, in the Lower Provinces of Bengal.

2. On the evening of the 4th March, 1901, I was suspended from my office by the Local Government by a letter No. 1481-A.B., copy of which is annexed. It will be seen that no charges were framed against me, that I was not asked to furnish any explanation, and that no limit to the period of my suspension was indicated.

3. On the 11th March I addressed to the Chief Secretary to the Local Government a letter, No. 1 Suspension, of which a copy is annexed, enquiring whether it was in contemplation to frame any charges against me and whether I should be allowed to submit any explanation or to be heard in my defence.

4. In reply, the Local Government have informed me in their Chief Secretary's letter No. 1872-A., dated 13th March, that they have at present no further information to communicate to me.

5. The immediate result of the order suspending me is that instead of getting pay and allowances of Rs. 2,500 per mensem, I get a subsistence allowance of Rs. 400 per mensem only. I am precluded from practising my profession as a barrister, or from taking up other work. It is my belief that I can earn a great deal more than Rs. 400 per

mensem out of Government Service, and I may say that I have already had to refuse an offer of the Editorship of a leading up-country paper, which would certainly have brought me far more than that amount.

6. I had been assured by the Local Government early in the year that I should be allowed leave in or about the early part of May. The state of my health renders it imperative that I should go home before long. But in my present state of uncertainty I can neither take my own passage nor that of my sister, who is living with me, and whose marriage, on the faith of the assurance of the Local Government, had been arranged to take place in England early in the summer, Her future husband has already, in consequence of the recent action of the Local Government, had to undertake a railway journey of 3,500 miles, and to cancel important business engagements in Bombay.

7. I believe that the action of the Local Government in suspending me was wholly improper. I am advised that it was wholly illegal. My submission is that the Local Government acted in a hurry, that they are now at once unable to justify their action and unwilling to make amends for it. The recommendation of the Chief Justice or of certain Judges is obviously in itself an insufficient reason for suspending me; whoever may have recommended them to take the step, the responsibility for my suspension rests with the Local Government and with them alone.

8. I have, therefore, to request that the Government of India may be pleased to direct the Local Government either to reinstate me without delay, or to inform me what the charges against me are, and to give me reasonable facilities for defending myself against such charges.

9. The English mail leaves Calcutta on Thursday evening next, and I have further to request that if the Government of India intend to reply to this letter at all, the reply may be sent me not later than 2 p.m. on that day (21st March), as I intend, unless I get satisfactory redress in the interval, to address the Secretary of State and various non-official persons and bodies by that mail.

10. A copy of this letter is being sent you through the Chief Secretary to the Local Government. I send the present copy direct to save time.

Annex No. 8.

Letter from Mr. Hewett, C.S.I., C.I.E., Secretary to the Government of India, Home Department, to the Officiating Chief Secretary to the Government of Bengal, No. 2691, *dated Calcutta, the* 20*th March* 1901.

I AM directed to acknowledge the receipt of your letter No. 2025-A., dated the 19th March 1901, with which was forwarded a letter No. 2 Suspension, dated 18th idem, addressed by Mr. A. P. Pennell, of the Indian Civil Service, to the Government of India in this Department. Mr. Pennell prays that the Government of India may be pleased to direct the Local Government either to reinstate him in his office without delay, or to inform him what the charges are against him, and to give him reasonable facilities for defending himself against such charges. Mr. Pennell has, you explain, been suspended on the recommendation of the Honourable Chief Justice and the Honourable Judges of the High Court, and the reasons for his suspension are contained in the letter No. 600, dated 4th March 1901, from the Officiating Registrar of the High Court to the Local Government, a copy of which has been duly communicated to Mr. Pennell. I am to request that Mr. Pennell may be informed that the Government of India decline to interfere with the orders passed by the Government of Bengal.

Enclosure 3 in No. 1.

Letter from Mr. Buckland, C.I.E., Officiating Chief Secretary to the Government of Bengal, Appointment Department, to the Secretary to the Government of India, Home Department, No. 299-*A.D., dated Darjeeling, the* 19*th May* 1901.

IN continuation of my letter No. 124-A.D., dated 9th May 1901, and of my telegram of 16th instant, I am directed by the Lieutenant-Governor to forward a copy of a letter dated Bombay, May 14th 1901, from Mr. A. P. Pennell, announcing his intended departure from India on the following day. The telegram of the 16th instant shows that he carried out his intention.

2. It will be observed that Mr. Pennell states that it was only owing to ignorance of the necessity for obtaining permission that he had not applied for permission (to leave India) before. Mr. Pennell may not have been aware that

under Article 218 of the Civil Service Regulations no leave was admissible to an officer under suspension, but it is impossible to accept the proposition that any officer is not fully aware that he cannot leave India without permission. Mr. Pennell himself has more than once applied for casual leave for the purpose of only going away from his station. He must *á fortiori* have been aware that he could not get out of India without leave. Moreover, he obtained leave from Government in the usual manner on previous occasions when he went on privilege leave and furlough.

3. Mr. Pennell in his 3rd paragraph writes that in the peculiar circumstances of his case he can hardly conceive the possibility of such permission being refused, and in his next paragraph he announces his intention of leaving India in anticipation of permission being granted. Mr. Pennell appears deliberately, or through loss of mental balance, to have misapprehended the correct argument, viz., that in the peculiar circumstances of his case it was hardly conceivable that such permission would be granted to him: and nothing has ever been said or done to him that would justify his leaving India in anticipation of sanction. There is nothing to show that it was necessary for him to leave India on 15th May, or before a reply to his application of the 14th instant could reach him.

4. It appears therefore to the Lieutenant-Governor that Mr. Pennell has, after receiving a formal warning, conveyed to him under the orders of the Government of India, deliberately broken Article 8 of his covenant. It is not for His Honour to determine what consequences this particular act should entail on Mr. Pennell. But should His Excellency the Viceroy and Governor-General decide to dispense with Mr. Pennell's services, Sir John Woodburn will take this opportunity of saying that, having regard to Mr. Pennell's conduct as set out in my letters Nos. 123-A.D. and 124-A.D., of the 9th May 1901, to your address, he has no plea to offer on Mr. Pennell's behalf in mitigation of sentence.

Annex.

Letter from Mr. A. P. Pennell, Suspended Civil Servant, to the Chief Secretary of the Government of Bengal, dated Watson's Hotel, Bombay, the 14th May 1901.

I have the honour to acknowledge receipt of your telegram of yesterday's date stating that under orders from the Government of India I am informed that under Article 8 of my covenant I cannot leave India without obtaining permission.

2. Your telegram does not indicate from whom this permission has to be obtained—whether from the Local or the Supreme Government. I have, therefore, to request that His Honour the Lieutenant-Governor will either give me the requisite permission himself, or if that is not in his power, that he will move the Government of India to do so.

3. In the peculiar circumstances of my case I can hardly conceive the possibility of such permission being refused; and it is only owing to my ignorance of the necessity for obtaining it that I have not applied for it before.

4. I had taken my passage in the Rubattino S.S. Dominico *Balduino* before receipt of your telegram, and intend leaving by her to-morrow in anticipation of permission being granted.

5. I request that any orders which the Local Government may have for me either on the subject of this letter or in any other matter may be addressed to me at the East India United Service Club, St. James's Square, London, S.W., England, and that the covers may be marked "to wait arrival."

Enclosure 4 in No. 1.

Extract from the "Bengalee," *dated the 20th May* 1901.

Letter from Mr. Pennell to The Government Prosecutor, Noakhali.

MY DEAR TARAK BABU,—I am informed by Jashoda Babu and others that the trial of Sadak Ali has been fixed for the 6th instant, and that at Mr. Cargill's instance certain witnesses not examined before me but mentioned in

the judgment of the High Court have been cited for the prosecution, also that Osman Ali, Mathura Babu, and Mr. Reily have been summoned.

As I am well acquainted with the facts of the case, I send you the following instructions which will, I think, be of assistance to you :—

(1.) Hosan and Torap should be examined by the prosecution, as before me. No doubt Messrs. Amir Ali and Pratt profess to believe that they are false witnesses, but their opinion is quite irrelevant. It will be for Geidt and the new Assessors to say whether they will believe them or not.

(2.) Islam (or Ismail) should be asked what way he went home and whether he crossed the break. Mr. Amir Ali's statement that he went home that way is altogether unsupported by the evidence. It is almost physically impossible that he should have done so.

(3.) Islam should also be asked as to the position of his house. There is nothing to show this except the police maps, which are false.

(4.) To prove that the police maps are false, the map prepared by Babu Binod Bihari Pal, District Engineer, subsequent to the murder case enfilled in the proceedings against Mr. Reily, should be put in and proved. It shows the actual state of things and also the state of things shown in the police map. Unfortunately, Messrs. Amir Ali and Pratt have uot referred to this map in their judgment in the Reily case.

(5.) Mr. Amir Ali has professed to believe that Saroda Mohan Chakaravarti when he said the "edges" of the break were nine inches from the level of the road meant that the "sides" were shallow, and not the "ends." Ask Saroda Mohan what he means by edges.

(6.) Also examine the District Engineer in detail as to this break and call Ishan Chandra Sen, the Head Master, to prove the real state of things. Prove by him the measurement we all made of the depth of the break both in the middle and at the edges.

(7.) It will also be a good thing to get a white man to depose as to he nature of the break so as to contradict Reily. I am told Mr. Geidt himself as been there and seen it ; but of course you cannot prove that. You might, however, call Simpson, the D.S.P., who, I am told, has seen it. If necessary, call Ezechiel. I myself showed it to him. Of course, we all know that Reily lied about it ; but for political reasons, the Executive are bent on making out he did not, and it is advisable to get some white or whitey brown witness to contradict their whitey brown policeman. Black evidence won't do. If necessary, examine Radha Kant Babu about the break as you proposed to do in the perjury case.

(8.) Don't call Reily for the Crown. Let the other side of the Court call him and begin cross-examining him by putting his former deposition to him. Bring out the fact that he read it over on a subsequent day and made several corrections, and when reading it over he was given a seat to my right hand on the level of the Assessors. Ask him if I have any private grudge against him (never mind Geidt's disallowing the question, it should be "asked."). I have letters which render it impossible for Reily to set up the story of grudge. Ask him categorically whether he went over Guna Mir's Road, and call his attention to Mohim Chandra Mazumdar's evidence. Also ask him categorically whether he went with Bharat Babu over Ashak Jemadar's Road, and call his attention to Bharat Babu's evidence. Ask him also how he got past the break. Ask him whether he is a good rider, and question him as to his falling off his horse when the L.-G. visited Noakhali. Prove that the roads in the south-west of the plain are rough and uneven. If Reily says he can ride, then ask Geidt to test him, and make him to canter on my chestnut mare, the one Dwarkanath Bose has bought—he will fall off in the first hundred yards.

(9.) Ask Mr. Reily how "it came to be dated on Exhibit A as 15th September." Also ask him when he made the pencil marks on Exhibit Aa—before or after it was copied ? If he says before, ask Mohim Chandra Mazumdar how he failed to copy them. Also ask Mr. Reily "why" he made pencil marks :

why he showed the break at all. Ask him whether or not he was reprimanded by Mr. Bignell about this case just before giving his evidence; whether he asked Mr. Bignell for a transfer on the 4th of January, and what Mr. Bignell said to him on that day and the following day.

(10.) Go over Mr. Reily's statement on important points at the previous trial, and either make him take back all the lies he told, or if he sticks to them, apply to Mr. Geidt to prosecute him again.

(11.) If Mr. Kisto Bhadra is examined again for the defence, cross-examine him as to the part he played in the stolen note case. You left this out before me.

(12.) I see Mathura Babu is to be examined. Jashoda Babu tells me that he was instructed that this Mathura Babu got a letter either from Mrs. Reily or from her sister. He believes the former telling him not to send up the accused, and that he, therefore, cited him in the lower Court, but that Mathura Babu begged and prayed him not to examine him, so Jashoda did not do so. Ask Mathura Babu about this.

(13.) If necessary, prove by examining some European that Reily was completely controlled by his wife. Ezechiel would prove this as well as any one else.

(14.) When Osman Ali is called, cross-examine him as to previous history; the length of time he has been on different occasions at Sudharam Thana (14 years, I am told), and the money he has amassed; also his rate of pay. Bring out Upendra Babu's recent remarks about him and the fact that Mr. Cargill took no action on them.

(15.) Ask Islam if he has got any redress for his mal-treatment by the police when attending my Court.

(16.) If the additional witnesses cited at Mr. Cargill's instance prove hostile to the prosecution, point out to the Assessors that they are Mr. Cargill's witnesses.

(17.) In addressing the Assessors lay stress upon the fact that all the witnesses are deposing against their own interest in giving any evidence at all against Osman Ali's friends and that no reasonable motive for their giving false evidence has been suggested.

I may send you some further hints later on. These must do for the present.

A. P. PENNELL,
Late Sessions Judge of Noakhali.

Enclosure 5 in No. 1.

Letter from Mr. H. Thirkell White, Officiating Chief Secretary to the Chief Commissioner of Burma, to the Secretary to the Government of India, Home Department, No. 936—7 C.—29, *dated Rangoon, the 27th November* 1894.

I AM directed to submit a copy of the correspondence cited in the margin concerning the conduct of Mr. A. P. Pennell, C.S., a Deputy Commissioner in this Province, shortly expected to revert to Bengal.

No. 4968—2 C.—21, dated the 22nd October 1894, from Commissioner, Irrawaddy Division, with enclosures.
No. 873—7 C.—29, dated the 26th October 1894, to Commissioner, Irrawaddy Division, with enclosure.
Telegram No. 743, dated the 22nd November, to Commissioner, Irrawaddy Division.
Telegram No. 232, dated the 24th November, from Commissioner, Irrawaddy Division.

2. The Chief Commissioner's orders contained in the note enclosed in this office letter of the 26th October 1894 were, it is reported, communicated to Mr. Pennell by the Commissioner on or before the 30th October. The Commissioner reports that he has received no reply from Mr. Pennell and no reasonable cause for the delay has been given. It appears, therefore, that Mr. Pennell has deliberately disobeyed the Chief Commissioner's explicit orders. Under these circumstances, Sir Alexander Mackenzie has had no option but to relieve Mr. Pennell of his duties

and to place him under suspension till he shall have explained his conduct, and till his explanation shall have been considered. I am to recommend that Mr. Pennell should not be granted leave, should he apply for it, otherwise than on medical certificate, and should be instructed to remain in Burma till he has complied with the Chief Commissioner's orders and submitted an explanation of his insubordinate attitude.

2. I am to explain that the incident out of which this unpleasant situation has developed itself was the suspension by Mr. Pennell of Mr. Carstairs, Myoôk, serving in the Thongwa District. The Chief Commissioner has no doubt that Mr. Pennell expects to avoid the consequences of his contumacy by slipping out of the Province to Bengal.

3. I am to add that the present case is only the climax of a long series of acts of insubordination and impertinences of which Mr. Pennell has been guilty. Both the Financial Commissioner and the Commissioner of the Division in which Mr. Pennell serves have complained to the Chief Commissioner repeatedly of Mr. Pennell's conduct in this respect. The Judicial Commissioner also had reason to find fault with him on the same account. The Chief Commissioner was inclined to believe that Mr. Pennell was to some extent the victim of dyspepsia, and, in the hope that he would with better health develop better manners, spoke very seriously to him at Maubin about his attitude towards his Commissioner. Mr. Pennell promised amendment, but afterwards sought to make the Chief Commissioner's leniency appear to be an approval of his conduct. Following on this came the present correspondence, and the Chief Commissioner felt that he had no option but to read Mr. Pennell a severe lesson. If conduct like his were condoned administration would be impossible.

Annex 1.

Letter from the Commissioner of the Irrawaddy Division to the Chief Secretary to the Chief Commissioner of Burma, No. 4963—2-*C.*—21, *dated the* 22*nd October* 1894.

In continuation of my demi-official letter No. 4922—2-C—21, dated the 18th instant, I have the honour to submit copy of the marginally noted letter, with its enclosures in original, from the Deputy Commissioner, Thongwa, to my address, with reference to Mr. Carstairs' suspension. I have issued, pending further orders, the following telegram to the Deputy Commissioner :—"Kindly reinstate Carstairs and get what work out of him you can pending orders of Local Government; also draw up formal charges against him and call on him for explanation."

Letter No. 2273 P., dated the 19th October 1894.

I do not feel justified, at this stage of the proceedings, in offering any comments on the merits of the case.

Annex 2.

Letter from the Deputy Commissioner, Thongwa, to the Commissioner of the Irrawaddy Division, No. 2273 *P., dated the* 19*th October* 1894.

In continuation of telegraphic correspondence on the same subject, I have the honour to report that I suspended Mr. F. F. S. Carstairs, Myoôk, on the morning of the 28th September.

2. The circumstances of Mr. Carstairs' suspension will be best understood after a narration of the events which led to his transfer here.

3. The officer first posted here was Mr. H. Macdonald. Mr. Macdonald is currently reported to be at the same time thoroughly corrupt and very clever, and both I myself and Mr. Matthews considered that his being placed in charge of the sub-division which formed the principal theatre of the Munro frauds would have a most disastrous effect upon the progress of the inquiry. I have reason to believe that that enquiry is extremely distasteful to the Secretariat mainly owing to the fact that several officers of a much higher position than Mr. Munro are compromised. If it was intended or wished to burke the case, no better instrument than Mr. Macdonald could have been chosen for the purpose.

4. I do not believe that Mr. Macdonald's character was known to the Chief Commissioner. But it was perfectly well known to Mr. H. Thirkell White, the Chief Secretary, who procured his appointment. Mr. Thirkell White himself told me of Mr. Macdonald in 1890. "That man has been suspected wherever he has been." Under these circumstances, I venture to submit that Mr. White acted improperly in recommending Mr. Macdonald's appointment to a place where corruption is so notoriously rife as at Maubin.

5. As soon as I got to know of Mr. Macdonald's appointment, I conferred with Mr. Mathews and with my subordinates at head-quarters, two of whom, Messrs. Drury and Durrant, I found were equally well acquainted with Mr. Macdonald's character. The result of our deliberations was that I wired to the Chief Secretary to stop Mr. Macdonald, and that next day I wrote Mr. White a very strongly worded demi-official letter, in which I stated that I would not allow the scandals connected with the Munro case to be burked.

6. I do not believe that Mr. White has shown this letter to the Chief Commissioner, as it was his duty to do. It contained allegations affecting four Deputy Commissioners, and would have brought to the Chief Commissioner's notice the fact that Mr. White was sending to Maubin a man whom he knew or had reason to believe to be a thorough scoundrel.

7. The connection between this and Mr. Carstairs is as follows:—I believe that Mr. White sent me Mr. Carstairs in place of Mr. Macdonald as a punishment for daring to object to the latter. The Secretariat records and the opinions of the officers under whom Mr. Carstairs has served must have shown Mr. White that he was not a good officer. Mr. White in writing to me demi-officially about Mr. Carstairs has said that his opinion of the latter was that he was "rather stupid" and "not very fond of work," but "quite honest." When in Rangoon in September last, I informed Mr. White that Mr. Fraser, Deputy Commissioner, Pegu, had just told me that he knew Mr. Carstairs to be corrupt. Mr. White replied in a sarcastic tone—"I think you had better have taken Mr. Macdonald." What I would submit for the Chief Commissioner's consideration is that his Chief Secretary has knowingly sent me a fool because I objected to a knave, or rather that in place of a man who was merely a knave he has sent me one who is both knave and fool.

8. It will be seen that even Mr. White admits that Mr. Carstairs is "rather stupid" and "not very fond of work." I go further. In Rangoon I met Mr. Fraser, the late Deputy Commissioner, Pegu, under whom Mr. Carstairs has recently been serving. Mr. Fraser told me that he knew Mr. Carstairs to be corrupt, to take money, that he was absolutely useless, and that every Deputy Commissioner under whom he had served had expressed the same opinion of him. I informed Mr. White of this within the next two days. It was then that Mr. White delivered himself of the remark I have quoted. The Chief Secretary did not consider that an allegation of corruption made by a Deputy Commissioner against one of his subordinates called for any enquiry. I trust that the Chief Commissioner will be of a different opinion.

9. The following are the opinions of Mr. Carstairs' last two superiors with regard to that officer :—

Mr. Fraser, Deputy Commissioner, Pegu, writes :

> "Served in this district as Head-quarter Myoôk. A poor Judicial Officer. His procedure in some cases and conclusions arrived at being most extraordinary. Peevish disposition, and prone to quarrel with the Police. I know nothing about him as a Revenue Officer."

N.B.—Mr. Carstairs has never done any work as a Revenue Officer.

Mr. Ross, Deputy Commissioner, Tharrawaddy :

> "I endorse so much of the above as relates to his judicial work. He is a feeble officer."

10. Considering that Maubin is one of the heaviest sub-divisions in Burma, that it has a land revenue of nearly six lakhs, a fishery revenue amounting even this year to Rs. 2,25,000 and normally to three lakhs, and that the total revenue is not less than twelve lakhs, more than all but a few districts ; considering also that it has been very much neglected in the past, considering Mr. Carstairs' reputation, and the circumstances I have above mentioned, I think I am justified in attributing Mr. White's selection of Mr. Carstairs to personal pique, and I think that I am not only justified, but that it is my bounden duty, to bring these facts to the Chief Commissioner's notice, for the mischief which a man in White's position can do in this way is immense, and the officers of the Burma Commission have been accustomed so long to Government by Secretaries, that few of them will venture to call attention to it.

11. I think I have already succeeded in proving that Mr. Carstairs is not a fit person to hold charge of the Maubin Sub-division, if indeed he be a fit person to remain in Government service at all. He is certainly a man whom no private employer would retain for a month. I now proceed to the circumstances attending Mr. Carstairs' suspension.

12. Mr. Carstairs had not long been under me before I found that Mr. White's remarks as to his being "not very fond of work" did not err in the way of exaggeration. He contented himself with "forwarding" the reports of the township officers, which he asked should be accepted without enquiry on his part, "because

the matter had been long pending." He attempted to shelve his case work, small as it was, upon Mr. Thompson. I told him when he came here that what I most wanted him to do was to tour about the sub-division doing long pending revenue work and checking capitation tax which I know to have been grossly neglected last year. I found, however, that Mr. Carstairs' notions of touring consisted in going down to Kyaiklat, which is a more comfortable place than Maubin, and remaining there. I thereupon drew up a programme of tour for Mr. Carstairs and directed him to adhere to it.

13. I may add that although it is extremely necessary that the Sub-divisional Officer should go on tour, the discomfort of touring in the Maubin Sub-division is very great, specially at this season of the year when the mosquitoes are at their worst, and the country is nothing but an expanse of mud. Mr. Carstairs unfortunately belongs to a class by whom shirking one's duty, as soon as it becomes uncomfortable, is not considered disgraceful; and this explains a good deal of what follows.

14. I wished Mr. Carstairs to go out before the 23rd September, but as he desired (to use his own expression) to get into the run of things, I eventually fixed that date as the commencement of his tour which was to last for a considerable period.

15. I left Maubin for Rangoon on the evening of the 16th September. I returned on the 23rd (Sunday). It was then reported to me by Maung Kyaw Nyeim, Township Officer, that Mr. Carstairs had done no work since the Wednesday following. The next morning I got from Mr. Carstairs the note marked A (sent in original). To this I sent a reply to the effect that, under the circumstances, Mr. Carstairs need not go out for the next few days, but that I didn't think it could do his rheumatism any harm to go to Court, and that, as it was urgently necessary that a murder case (which Mr. Carstairs had postponed for wholly insufficient reasons from the 19th) should be tried, I wished him to do so.

To this he replied in the note marked B. I may add that I found afterwards that he had not tried the murder case nor any other case, although he had promised to transact *all* work where he was. What work he did I do not know. To the best of my belief there *was* no work but the cases.

16. The next day (25th) Mr. Carstairs attended Court, and I saw with my own eyes that there was nothing the matter with him. I then arranged with him that he should go out on the 28th.

17. I told him to take up the murder case at once, and on its being reported to me by the District Superintendent of Police that he had not done so, I sent for him and repeated the order. The matter was one of great urgency, as the Sessions Judge was sitting idle and wrote to me about the case. After going away Mr. Carstairs sent me a note asking me to allow him to postpone it till the next day. Rather than contend with him further I gave way.

18. The next day (the 26th) I had to send for him five times to get the case finished

19. Neither on the 25th nor 26th was anything said by Mr. Carstairs about his illness preventing him from going out on the 28th.

20. On the 27th Mr. Carstairs sent me the note marked C, which, with my reply, I send in original.

21. Some time after he sent me the note marked D. I may point out that if he fixed cases at Maubin for a time when I told him to be out on tour it shows that he had made up his mind to disobey my orders.

22. I then sent Mr. Carstairs the order marked E, which I attach.

23. Next day I received from Mr. Carstairs the letter marked F, with certificate, marked G, from Civil Surgeon. I would call special attention to the terms of that certificate. The Civil Surgeon does not state that it would be dangerous for Mr. Carstairs to go out; nor that it would do him any appreciable damage, but simply that he recommends that Mr. Carstairs should not go out into the district for two or three days. The same might be said in the case of a cold.

24. After a consideration of this certificate I formed the opinion that it did not justify Mr. Carstairs in disobeying my orders. I then sent him the order marked H.

25. To this Mr. Carstairs replied in the letter marked J on which I would remark that in stating that there was nothing "urgent" to do, Mr. Carstairs stated what he knew to be false. On receiving this note I sent for Mr. Carstairs to my house and sent for Mr. Thompson as a witness as to what happened. Mr. Thompson will also be a witness as to whether Mr. Carstairs was unable to go to the jungle. I may add that he walked without difficulty, but that for the purposes of his tour he would merely have had to travel by boat.

26. Mr. Carstairs once more refused in Mr. Thompson's presence to go to the jungle. I then suspended him.

27. I may add that the difficulty of dealing with men of Mr. Carstairs' stamp here is very great. A man of our own class of society would be ashamed to act in this way, but to talk of shame to a man like Mr. Carstairs is like talking of honour to Joseph

Surface. Maubin is an extremely unpopular station with a great deal of work to do, and what the Carstairs type of human being thinks is that he cannot be sent to any worse place and may easily, by giving sufficient trouble, be transferred to a better. What I would submit should be done is that an enquiry should be held as to the work which Mr. Carstairs has done since his confirmation in his appointment, and that his retention in the service of Government should be made dependent on the result.

28. The charges which I make against Mr. Carstairs are that he is idle, incapable, corrupt, and insubordinate. It is impossible for me to work this heavy district with Mr. Carstairs in charge of one of its sub-divisions, and unless he is adequately punished for his past misconduct, nothing can be more certain than that he will be one of my strength in whatever capacity he is employed under me. But the really important matter is, not what should happen to Mr. Carstairs, but what should be done to carry on his work, Thongwa is far and away the heaviest district of Burma, there are large arrears which are fast increasing, and I cannot clear them off without adequate assistance. The Chief Commissioner recognised in July that I ought to have two qualified Assistant Commissioners at Maubin, but I have never had them except in name. If in this letter I have written strongly, it is that my sense of the importance of clearing off arrears, and of the trouble and inconvenience which the present delays occasion, constrain me to lay before the Chief Commissioner what I believe to be the truth.

Annex 3.

Letter from H. Thirkell White, Esq., Officiating Chief Secretary to the Chief Commissioner of Burma, to the Commissioner of the Irrawaddy Division, No. 873-7-C.-20, dated Rangoon, the 26th October 1894.

WITH reference to your letter No. 4963-2-C.-21, dated the 22nd instant, and its enclosures, I am directed to forward, for your information and for communication to Mr. Pennell, Deputy Commissioner of Thongwa, a copy of a note containing the orders of the Chief Commissioner on the case.

Annex 4.

Note by Sir Alexander Mackenzie, K.C.S.I., Chief Commissioner of Burma, dated the 26th October 1894.

I am astonished that the Commissioner should have consented to receive and forward to me a letter of the style of Mr. Pennell's, No. 2273, of the 19th October. Mr. Pennell seems to look upon himself as the chartered libertine of the Burma Commission, and voids impertinences in his official and demi-official correspondence which would not be tolerated in any Government service elsewhere, and which it is high time should cease even here and from him.

Instead of giving a clear and direct report of his reasons for suspending his Sub-divisional Officer, Mr. Carstairs, he enters on a long and altogether irrelevant statement of what he terms "the events which led" to Mr. Carstairs appointment.

This consists of a gratuitous and most unwarrantable series of libellous insinuations against the Chief Secretary to the Local Administration and the Secretariat generally, who are all to Mr. Pennell's warped imagination banded together to "burk" the "Munro case." Mr. White is charged with having had this sinister end in view when he got Mr. Macdonald appointed as Sub-divisional Officer of Maubin. When Mr. Pennell succeeded in stopping the intrigue by an uncompromising demi-official, the Chief Secretary sent him as a punishment instead of a "knave" pure and simple a "fool," or rather a man who was both "knave and fool." Mr. Pennell puts the coping stone on his impertinence in the closing sentence of his paragraph 10, where the Government of the Province is said to be left to Secretaries, and Mr. Pennell puts himself forward as the only man who has ever ventured to call attention to this fact. His self-complacency would be amusing were it not so malicious in its manifestations and mischievous in it results.

I need scarcely say that Mr. Thirkell White is not obnoxious to any one of Mr. Pennell's scandalous insinuations. He laid before me all his communications from Mr. Pennell on receipt, and took my orders on every point in the correspondence.

Mr. Pennell will forthwith withdraw the whole of his intolerably insubordinate letter of the 19th October, and will substitute for it a simple statement of the grounds on which he suspended Mr. Carstairs. He will also by return of post submit through the Commissioner a full and ample apology to Mr. Thirkell White for the false and malicious insinuations which he has dared to put on paper regarding that officer.

I am not sure that I ought not to suspend Mr. Pennell at once, or reduce him to a sub-division, reporting the facts of this and other cases in which Mr. Pennell has misconducted himself to the Government of India that he might be kept in Burma in a subordinate position until he learns how to behave himself decently, but I am willing to give him once more a *locus penetentiæ*.

As regards the appointments of Messrs. Macdonald and Carstairs, they were of my ordering. I am perfectly well acquainted with the record of both of them. I only agreed to cancel Mr. Macdonald's transfer because I knew Mr. Pennell to be in such a state of nervous tension at present that I thought it best to humour him if it could be managed, though under any other Deputy Commissioner I had no doubt Mr. Macdonald would have done good work in Maubin. I sent Mr. Carstairs in his place because it had been decided to try him in a sub-division, and there was really no one else available at the time.

Mr. Pennell in his paragraph 27 draws a contrast between the probable conduct of "men" like Mr. Carstairs and men of his (Mr. Pennell's) class of society. I am not aware that it is usual among gentlemen of the class in which Mr. Pennell's official status would *primâ facie* place him to quote, without permission, in official correspondence, remarks made to them in the confidential freedom of private and unofficial conversation. This is, however, what Mr. Pennell does, and on the strength of such remarks he launches the most serious charges against officers of whom he personally knows nothing. It does not seem to have occurred to him that a Deputy Commissioner may form a bad opinion of a subordinate and communicate this by way of warning to a brother Deputy Commissioner, while he would be hard put to it to prove any tangible misfeasance on the part of the suspected person. Mr. Pennell is, however, himself ready to charge a subordinate with idleness, incompetency, corruption and insubordination, before he has been under him a month. He will now have to prove his charges against Mr. Carstairs, and if he fails to do so, the consequences will be serious for Mr. Pennell.

The Commissioner will proceed without delay to get from Mr. Pennell a retractation of those of his charges which he is not prepared to press, and proof of all charges that he, in his cooler moments, decides to formulate.

The impression left on my mind by the papers forwarded by Mr. Pennell is that he treated Mr. Carstairs with extreme and unnecessary harshness, the result, as is now evident, of a strong and preconceived prejudice.

As Mr. Pennell refers with satisfaction to his demi-official of the 25th August, I may remark here that the reckless manner in which, not in that only but as a general rule in all his correspondence, Mr. Pennell asperses the work and character of the officers who have preceded him is something unique in my experience. He has no good word for any one but himself. I must say that so far I have seen little in his management of Maubin to warrant his self-complacency. His reports have all been months in arrears. The only thing that he seems to do *con amore* is to criticise the work of his predecessors and superiors, while he wastes his time in such long-winded impertinences as his letter of the 19th October, and that to the Judicial Commissioner about the Kromer case.

Annex 5.

Telegram from the Chief Secretary to the Chief Commissioner of Burma to the Commissioner of the Irrawaddy Division, No. 743, dated the 22nd November 1894.

Please see my No. 873-7-C.—29 of 26th October. Has Pennell complied with Chief Commissioner's orders. If not, is there any reasonable cause of delay. Telegraph reply.

Annex 6.

Telegram from the Commissioner of the Irrawaddy Division to the Chief Secretary to the Chief Commissioner of Burma, No. 232, dated the 24th November 1894.

Your 743. Pennell not yet complied with Chief Commissioner's orders, though two reminders sent. Your telegram repeated to him yesterday for explanation. No reply yet to hand; will send on receipt.

Enclosure 6 in No. 1.

Letter from Mr. J. P. Hewett, C.I.E., Officiating Secretary to the Government of India, Home Department, to the Chief Commissioner of Burma, No. 2080 (Confidential), dated Calcutta, the 21st December 1894.

With reference to your letter No. 936—7 C.—29, dated the 27th November 1894, forwarding copy of a correspondence concerning the conduct of Mr. A. P. Pennell, I.C.S., a Deputy Commissioner in Burma, I am directed to request that Mr. Pennell may be informed that he must remain under your orders until he complies with your order of the 26th October 1894 calling upon him to submit an explanation of his insubordinate attitude.

No. 2.

Letter from the Under Secretary of State to Mr. A. P. Pennell, No. 989 (*J. & P.*), *dated India Office, 29th June,* 1901.

I AM directed by Lord George Hamilton to forward a copy of a letter, No. 54, dated the 30th May, 1901, from the Government of India, and of its enclosures, in which it is recommended that, for the reasons therein stated, you should be removed from the Indian Civil Service.

I am to request that you will state, within one month from the date of this letter, any reasons which you may have to urge against the adoption of the course proposed by the Government of India.

I am, &c.,

(Signed) A. GODLEY.

No. 3.

Letter from Mr. A. P. Pennell to the Under Secretary of State for India, dated 22nd July, 1901.

WITH reference to your letter No. J. & P. 989, dated the 29th June, 1901, I have the honour to solicit that the time allowed me to submit my reply to the charges against me may be extended to, say, the 10th August.

The charges are contained in 350 printed folio papers, and cover my whole service of nearly 16 years. My reply to them, though I am compressing it as much as possible, will necessarily be lengthy. I may add that my luggage came round by sea, and that in consequence I did not get many of the documents on which I rely till the 10th July. I hope, therefore, that my request for a little extension may not be deemed unreasonable.

I have, &c.,

(Signed) A. PENNELL.

No. 4.

Letter from the Under Secretary of State to Mr. A. P. Pennell, No. 1228 (*J. & P.*), *dated 23rd July,* 1901.

IN reply to your letter of 22nd instant, I am directed to inform you that, in the circumstances mentioned by you, the Secretary of State for India consents to the extension to the 10th August next of the time within which you should submit the representation invited in my letter of the 29th ultimo.

I am, &c.,

(Signed) A. GODLEY.

No. 5.

Letter from Mr. A. P. Pennell, Indian Civil Servant, to the Under Secretary of State for India, dated 35, *Lancaster Park, Richmond Hill, London, S.W., the* 10/12*th August*, 1901.

WITH reference to your No. J. and P. 989, dated the 29th June, 1901, enclosing copy of a letter from the Government of India recommending my removal from the Indian Civil Service, I have the honour to submit the following reasons against the adoption of that course.

I would premise that I was suspended from my employment so far back as the 4th March, 1901, by the Government of Bengal, purporting to act upon the recommendation of the Calcutta High Court; the only information afforded to me as to the cause of my suspension being contained in a copy, annexed to the order suspending me, of a letter from the Registrar of the High Court to the Chief Secretary to the Government of Bengal. That letter (No. 600, dated the 4th March, 1901), is not among the enclosures of the Bengal Government's letter recommending my dismissal; but it is one of the enclosures to both the memorials which I have successively addressed to the Secretary of State, and His Lordship will find it printed among the enclosures of the Bengal Government's letter, No. 124, A.D., dated the 19th May, 1901, forwarding the second of those memorials. On a reference to it His Lordship will see that save and except a vague charge of "contempt," the nature of which contempt is not indicated, the only ground alleged for recommending my suspension is that I "did not hand over" a certain record; and though the letter does not state that I ever *refused* to make over this record (and, indeed, the allegation that I "declined to reply" seems to negative such a supposition), I presume it is intended to suggest the inference that I was *unwilling* to make it over.

But although this charge of failing to make over a record is the only one which has ever been brought to my notice by the authorities, who have first suspended, and are now proposing to dismiss me, I find from the papers enclosed with your letter that it has to all intents and purposes been abandoned, and that I have now to meet a number of general charges extending over my whole life, and which I have to extract as best I can from 350 printed folio pages; that I am accused of "malice," "malevolence," "incompetence," "falsehood," "morbid vanity" amounting to "delusion," "habitual" and "designed" insubordination, "repeated abuse of official position and powers," even with a "wilful" desire to provoke removal from the service. It is further thought necessary to refer to the facts that in my younger days I horsewhipped a man in Burma, in 1893, and made a high official very angry in 1894.

The first remark I have to make with reference to these charges is that, if they are really true—if the picture drawn of me by the Government of Bengal and the Government of India is a correct one—it is somewhat surprising that I should have been so long retained in responsible employment by official superiors who appear, I would submit, to entertain no very friendly feelings towards me; still more so, that when those superiors at length bestirred themselves to take against me the action which they should have taken years before, they should, with so many far more serious charges in reserve, have preferred to advance against me one which on the face of it is comparatively trifling, and which, whether trifling or not, is not now seriously pressed even by themselves.

In the next place I would point out that your letter of the 29th June was the very first intimation I have had of these charges, and was also the very first time that any one has given me an opportunity of being heard, either on the present charges or on that on which I was originally suspended. It is not that there was ever any difficulty in communicating with me or in asking for my explanation. I was suspended on the 4th March, and I did not quit India till the 15th May, nearly 2½ months later. The authorities throughout were aware of my whereabouts—indeed, I was all along praying—

clamouring if that expression be preferred—to be informed what *they themselves* charged me with (as they professed to be acting only on the recommendation of others), and to be given a chance of defending myself—clamouring so that the very loudness of my protests is stigmatised as revealing a "wilful desire to provoke removal from the service"—the very fact that I appeal to the Secretary of State against one act of injustice being made a reason for perpetrating another.

After being suspended I waited some days in the expectation that the Bengal Government, who professed to have suspended me merely because they were recommended to do so, would frame charges of their own, and would call for my explanation on those charges—and I was encouraged in this expectation by the fact that the Government of India's rules lay down that this must invariably be done when an officer is suspended, and, indeed, direct that it should be simultaneous with his suspension. As, however, no further orders reached me, I wrote to the Bengal Government on the 11th March, enquiring whether it was in contemplation to frame any charges against me, and whether I should be allowed to submit any explanation or to be heard in my defence. The Bengal Government informed me, on the 13th March, that they had no further information to give me. On the 18th March I addressed the Government of India, asking that they would be pleased to direct the Local Government either to reinstate me or to inform me what the charges against me were, and to give me reasonable facilities for defending myself. On the 20th March the India Government intimated that they declined to interfere with the orders passed by the Local Government, and referred me to the Registrar's letter for the reasons for my suspension—a clear indication, I submit, that I had nothing else to answer for to the executive authorities! The Local Government delayed for a whole day to send me this letter, though I had specially asked to get a reply, if it were intended to send me any at all, in time for me to write to His Lordship by the outgoing mail—and in consequence I despatched to the Secretary of State direct, on the 21st March, the memorial alluded to in paragraph 11 of the Government of India's letter, and two days later forwarded a copy (enclosure No. 38, of the Bengal Government's letter) through the usual channels. This latter copy was returned to me by the Bengal Government with a letter dated the 2nd April, but not received by me till the 6th April. On the 29th April I submitted a fresh memorial to the Secretary of State through the usual channels, which has been forwarded by the Government of India with their letter recommending my dismissal. A copy of this second memorial I sent home by my sister on the 30th April, and I hold for it your office receipt, dated the 4th June.

These facts, which I have briefly recapitulated for easier reference, are set forth in somewhat more detail in my memorial of the 29th April. It will be seen that I was all along pressing to be informed what the charges against me were, and to be heard in my defence; that both the Local and the (so-called) Supreme Government persistently refused to hear me in my defence either on the charge brought against me by the High Court, or on any other charge, or to give me any information whatever—that one memorial which I addressed to His Lordship so far back as the 23rd March has been withheld altogether—and that a later memorial, which I submitted through the Government of Bengal on the 29th April has only been forwarded when, by leaving India, I had taken the matter out of the local authorities' hands.

The anxiety of those authorities—of the Government of Bengal and of the Government of India—to keep the matter from His Lordship will be clearly apparent from the following circumstances. The Government of Bengal in their paragraph 23 complain of my having taken the "unusual course" of forwarding a copy of my (first) memorial direct, which they apparently put forward as an instance of marked insubordination. Whether it is "*unusual*" to send His Lordship copies of such memorials direct will be best known to your office; all I would submit is that there is no apparent harm in doing so, while from numerous communications I have received from other persons similarly circumstanced it seems to me to have been a very wise precaution. I may also point out that when memorializing the Government of

India I similarly sent a copy direct (it is printed as an enclosure to the Bengal Government's letter, No. 124, A.D., dated the 19th May, 1901—the letter forwarding my second memorial). It was not indeed a case of sending; I personally handed over the copy to Mr. J. P. Hewett, C.I.E., the Secretary to the Government of India in the Home Department, and got his receipt for it. Mr. Hewett asked me if it was a letter which had to come through the Bengal Government, and I said yes, and that I was sending a duplicate through them. Mr. Hewett then gave me a receipt in the following terms:—

"Received a duplicate copy of a letter which is being submitted by Mr. Pennell through the Government of Bengal.

(Signed) J. P. HEWETT.

March 18th, 1901."

If there had been any objection to my sending a copy direct I submit that Mr. Hewett would have pointed it out, if not indeed refused to receive the copy. The fact that he received it without raising any objection shows, I submit, that he did not think there was any; and if there was no objection to my memorializing the intermediate Government direct, I submit there was none to my similarly memorializing the Home Government, and that the Bengal Government's remarks to the contrary merely reflect their disinclination to have the facts contained in my memorial brought to His Lordship's notice.

The Government of India are less candid than the Government of Bengal; they do not openly object to my sending the memorial direct, but only to other people knowing that I had done so—they complain of the facts being made public. (Vide their paragraph 11.) And indeed the predominant idea of the executive authorities seems to have been not so much to prevent His Lordship knowing the facts, as to prevent his knowing those facts *officially*.

In this connection I desire to invite His Lordship's special attention to the date of the Bengal Government's letter returning my memorial. The memorial was sent to them on the 23rd March, and a pencil note shows that they received it on the 25th, but it was not returned till the 2nd April, the first day after the close of the quarter on which the public offices were open. Now, Rule XIV., of the "Rules about the submission of Memorials addressed to Her Majesty the Queen or the Secretary of State for India" directs that a list of memorials withheld by the authorities in India shall be forwarded *quarterly* to His Lordship. If the Bengal Government had withheld the memorial in *March*, the fact of their withholding it would have been brought to His Lordship's notice almost immediately, but by delaying to issue orders on it until after the close of the quarter, they secured another three months during which His Lordship would have no *official* knowledge of the memorial; for the copy sent by me direct, not having been forwarded as prescribed in the rules, could have been ignored by His Lordship, had he been so disposed, under Rule No. 1. From paragraph 12 of the Government of India's letter, it appears that His Lordship was pleased not to ignore the memorial, but to communicate respecting it with the Government of India, but the action of that Government, and of its subordinate Government in delaying to return it (and in consequence to report its return) left to His Lordship the option of ignorance, and I submit that it was their hope and belief that His Lordship would exercise that option.

I have imputed the delay in returning my first memorial to the Government of India as well as to the Government of Bengal. It is true that there is no direct proof that the former Government was consulted; but as Lord Curzon was in Calcutta at the time, and my case was the burning topic of the day, I submit that he must have been consulted. I may add that I believe he was consulted by Sir John Woodburn even before my suspension; and that I myself saw Sir John Woodburn driving away from Government House (Lord Curzon's residence), looking very grave, at 6.0 p.m., on the 4th March, less than two hours before his Under Secretary handed me the order suspending me at the United Service Club. Whether I am correct in these surmises His Lordship can, if he thinks proper, enquire; I would only point out that I do not say that the consultation in either case was *official*, or that there will be any *record* of it.

I think it improbable that the quarterly return in which the withholding of my memorial is reported will have reached your office yet, or that it would reach your office in the ordinary course till after Parliament rises. The local authorities in India would thus, but for my coming home, have secured that His Lordship should have no official knowledge of my case until after the adjournment of Parliament.

It will be seen that the local authorities have not only refused me a hearing themselves, but have done everything in their power to prevent His Lordship giving me one. They withheld my original memorial, they took steps to secure that His Lordship should not know of their withholding it for months to come—they betray their irritation at my having sent His Lordship a copy direct, and their disappointment at his taking any notice of it—they withhold a second memorial until after I have left India, and then stigmatize my departure as "wilful desertion," in the hope apparently that His Lordship will treat it as such, and refuse to recognise me. With the charge of desertion I will deal at more length hereafter; my submission here is that their only object in advancing it was to secure, if possible, that I should not be given a hearing—to prevent His Lordship from taking the very step which he has taken.

An attempt has been made in paragraph 5 of the Bengal Government's letter, No. 124, A.D., of the 19th May (the letter forwarding the second memorial) to gloss over the delay of that Government in "issuing further orders" to me after my suspension. The ground alleged is that the appeal case (for the non-delivery of the records in which I was suspended) was not heard in the High Court until the 10th April—that judgment was not delivered in that appeal till the 17th April, nor in Mr. Reily's case till the 26th April, and that "while these cases were pending, it was impossible for the Lieutenant-Governor to issue any further orders to Mr. Pennell." I would point out that the High Court's opinion as to the merits or demerits of my judgment in the appeal case as to the guilt or innocence of the appellants, which alone was the subject of the appeal—could not possibly affect the question of my having failed to make over the record. If the High Court had intended to take any further action against me for that non-delivery, such action would have formed the subject of a separate proceeding—their approval or disapproval of my judgment in the case could not possibly have anything to do with that action. Mr. Reily's case had, if possible, even less to do with the charge on which I was suspended—a charge of not making over the record in a *separate* case. The Local Government had not the slightest pretext for professing to believe that the High Court intended to proceed further with the charge on which they had recommended my suspension, and as I shall show hereafter had on the contrary the best possible reason for believing that no further proceedings would be taken on that charge, the High Court having decided at a meeting held on the 6th March *not* to proceed further with it. Thus the reason assigned by the Local Government for their refusal either to reinstate me or to frame further charges against me altogether fails. But even if it be assumed for the sake of argument that the Lieutenant-Governor was for a time under the erroneous impression that the High Court intended to proceed with the charge of non-delivery of records, that impression must have been effectually removed by the receipt on the 23rd April of the Registrar's letter, No. 1049 (Enclosure, No. 41, of the Bengal Government's letter). In that letter it was formally intimated in the clearest possible manner that the High Court were unwilling to go on with the charge. I submit that on the receipt of that letter it was incumbent on the Local Government either to reinstate me, or if they had, or thought they had, anything further against me to tell me what it was—to let me know what I was accused of, and to hear what I had to say for myself. And Sir John Woodburn cannot say that he did not know where I was, or that he was unaware how anxious I was to meet any charges brought against me; for on the 29th April (six days after the High Court *formally* withdrew from the prosecution) I submitted to his Government my second memorial, the main purport of which was that no charges had been framed against me, and that I had not been given a hearing. Instead, however, of

doing what the plainest dictates of justice required, the Local Government, after taking various steps against me behind my back, on the 9th May, proceeded, still behind my back, to recommend my dismissal on a number of vague and general charges, which had no connection whatever with the matter for which alone I had been suspended, and which alone had been brought to my notice.

I may point out that no explanation of the failure to acquaint me with these charges or to give me an opportunity of defending myself has been even attempted, either by the Bengal Government or by the Government of India, and that I have already submitted that this latter Government seems to have entertained the hope that His Lordship would follow their example by condemning me unheard.

The charge of unwillingness to make over the record of the murder case, although the High Court, which brought that charge, declines to proceed with it, has not been in terms abandoned. The Bengal Government in their letter forwarding my second memorial, have not gone into the merits of that charge, but have preferred to shelter themselves behind the authority of the High Court. " The Lieutenant-Governor considers " he says, " that it was not open to him to question the recommendation made by the High Court, or to refuse to act upon it." In paragraph 22 of their letter recommending my dismissal, the Bengal Government attempt to defend their action in suspending me for not making over the record by saying that if they had not suspended me for that they would have suspended me for something else. I submit that it is no excuse for wrongfully arresting a man on a charge of theft to say afterwards that if you had not done that you would have arrested him on a charge of bigamy, and that such an argument does not tend to prove the justice of the original charge, but rather the reverse. The Government of India, however, in their paragraph 12 reiterate the charge which the High Court has dropped, and which the Government of Bengal has not thought it possible to sustain. It is necessary, therefore, that I should deal at length with that charge, especially as its weakness and the unwillingness of the authorities to admit that the charge is and was unfounded, and to redress the wrong they did in summarily suspending me upon it, furnish, I submit, the key to the greater part, if not all, of what I think His Lordship will already consider their somewhat extraordinary proceedings.

For this purpose I would request that His Lordship will compare the Registrar's letter making the charge (of unwillingness to surrender the record) with the Government of India's paragraph (paragraph 12) supporting it. He will note that the arguments advanced by the Government of India in support of the charge are not to be found in the Registrar's letter. Nor, apparently, did these arguments commend themselves to the Government of Bengal, who may be presumed to have been in a better position than the Government of India to appreciate them. I proceed to deal with these arguments in detail.

First, it is said that I excused myself for not having made the reference to the High Court required by the law. His Lordship will search my memorial in vain for any such excuse. There was no reason why I should excuse myself for a thing of which I was not accused. The charge against me was not that I had not made the reference, but that I had shown unwillingness to make over the record on the 4th March. To meet this latter charge I state that I had shown myself ready and anxious to make it over *before* the 4th March (viz., on the 3*rd* March) even though I had on that date two very good reasons for seeking delay, first, that there had been no time to arrange the record; second, that no letter of reference (which should have accompanied it) had been written.

If I had been *asked* to excuse myself for not having written the letter of reference, the simple but, I hope, all sufficient excuse which I should have given would have been that there was no *use* in writing the letter of reference till it could be despatched, and that it could not be despatched till the record

was ready to go; that it would take several days to make up, page, and index the record, while it would take five minutes to write the letter of reference. It may be necessary to explain to His Lordship that the letter of reference is purely formal. I do not know what other Judges write, but all I have ever written (and I have had to make several such references, a man having been hanged under my orders as far back as 1895) is as follows:—

"To the Registrar to the High Court, Appellate Jurisdiction.

"SIR,

"Under the provisions of sec. 374 of the Code of Criminal Procedure, I have the honour to transmit herewith the records of the case noted in the margin, and to request that they may be laid before the High Court for confirmation of the sentence of death passed upon the accused." (Here insert name.)

If what the Government of India mean is that there was undue delay in *making up the record*, I would reply, *first*, that this again is not what the High Court have charged me with; but, *secondly*, that there was not in fact any such delay; that so far from delaying, I took special measures, such as I have never before taken, to get the record ready quickly. The file (or rather files) were as stated by me in the Copying Department of my Court from the 16th to the 28th February. The Government of India affect to be making a great concession in "admitting that so much time was required in order that the judgment might be copied for the use of the appellants." In paragraph 12 of the Bengal Government's letter it is stated that I "surrendered" the record to the Registrar on the 6th March, but that "the record being very voluminous, the printing was not finished until the 27th of March." It seems to be the case of the High Court, and of the executive authorities that although the High Court did not as a matter of fact take up the case till the 10th of April, still they were, and always had been very anxious to take it up as quickly as possible (this, indeed, is put forward as their reason for calling for the record) at all events it is not their case that the printing of the record was purposely delayed. If it took the High Court 22 days to print the record, I can hardly be blamed for its taking me 13 days to copy it. The High Court have a very large staff, and I had a very small one. I had in my office only three "English copyists," *i.e.*, men licensed to copy English; and these "English copyists," and, indeed, I may say, even natives of much better education take much longer to copy English than an Englishman would. It was not a case of making a single copy of the judgment as the Government of India appear to think—three copies, not only of the judgment, but of the depositions, had to be prepared, one set of copies for the accused Sadak Ali (sentenced to death), a second for the accused Aslam and Anwar Ali, who filed a separate joint application (*each* accused I may note was *entitled* to have a separate set for himself), and a third for the District Magistrate, who had applied for them (as it subsequently transpired under orders of Government) as far back as the 29th of January, and had been continually renewing his application (vide my judgment, page 142,* of the High Court's Paper book, Part I). In addition to these copies, which had to be supplied free of cost, applications for copies were to be anticipated (and as a matter of fact were actually received) from Mr. Reily and other persons affected by the proceedings, and entitled under the rules to obtain copies on payment. (A list of these applications prepared by the Head Comparing Clerk of my office, is annexed—Enclosure A.) If the ordinary staff had been left to cope with this work, it would have taken them, perhaps, two months, so I placed my senior subordinate, Babu Lalit Kumar Bose, a Judicial officer of nearly 20 years' service, on special duty to superintend the copying, and drafted into the copying Department every man I could spare, either from my own office or from those of my subordinate Judicial Officers at head quarters. By dint of strenuous exertions these men succeeded in getting through the copying by the 28th February, although three of the days were Sundays and holidays (they worked on all these, except one day, which was not merely a Sunday but also the first day of the Dol Jatra, the great spring festival of the Hindus), and although on two other days many of them were commandeered by the Executive authorities for work in connection with the approaching Census.

* *Vide* Appendix, page 248.

It will be seen that the delay from the 16th to the 28th of February was unavoidable, and this is, indeed, conceded, though grudgingly, by the Government of India. That Government, however, urge that "there was in our opinion no reason whatever for the subsequent delay." This subsequent delay, I would point out, was a delay of *three days*; and the Government of India have omitted to mention the facts that Noakhali is over 300 miles from Calcutta, and 26 miles from the Railway; that the 1st and 2nd March were days on which I, in common with all officers under the Government of Bengal, had been ordered to suspend work on account of the Census, and that the 3rd March was a Sunday.

If I had really wanted to keep the record from the High Court; if I had really been "unwilling to surrender" it, as alleged by the Government of India, I submit that the very last thing I would have done was to go with it, directly I got in from the Copying Department, straight to Calcutta, where the High Court is.

The record, or rather *records*, when returned to me from the Copying Department were not in order. The files (which include, I may say, a large number of papers not printed in the High Court's paper-book) had not, with a few exceptions, been paged or indexed. Moreover, they were all loose, as they had been divided into pieces to facilitate the copying. The indexing I may say involves a description of each separate paper. It will hardly, I think, be denied that, whether rightly or wrongly, I attached extreme importance to the integrity of the records, and this necessitated the closest supervision of the men doing the work of indexing and paging (as it had in the case of the copying, the Munsif Babu Lalit Kumar Bose giving his whole attention to it). I had thus, if I had wished, an excellent excuse for retaining the record several days longer at Noakhali, but instead of doing this I started off with it at once, travelling on a day on which I was not supposed to do any work, and taking with me, for the purpose of putting the record in order before I made it over to the High Court, three of my most trustworthy men, the Serishtadar, who is head of the whole ministerial establishment, the (officiating) Head Clerk, who is in subordinate charge of the English Department, and the Sessions Clerk, whose duties are more immediately connected with Sessions records.

The journey from Noakhali to Calcutta is long and tedious; so troublesome in fact that my permanent Head Clerk on this occasion took leave on account of ill-health rather than perform it. There is first a road journey of 26 miles; then 50 miles by rail (the train leaving at 1.0 a.m.) then 100 miles or so by steamer; then another 150 by rail. I left Noakhali on the afternoon of Thursday, the 28th February, and arrived at Calcutta, as stated by the Government of Bengal, late on Friday, the 1st of March.

Saturday, the 2nd March, was, as I have stated, a holiday; nevertheless, I made the men work at arranging and indexing the records, and some little progress was made. More might have been done but for the fact that owing to ill-health, and being tired from my journey I was obliged to send the men away and lie down, as I repeatedly found myself falling asleep.

The 3rd March was a Sunday. On that day I was occupied in seeing Mr. Chapman, who came to get the record on behalf of the Chief Justice, in consulting Mr. P. L. Roy as to whether it would be proper for me to make it over in the informal manner proposed, and in going with it to the Chief Justice's house, and unsuccessfully attempting to deliver it to him there.

On the 4th March I endeavoured to swear affidavits to be used in support of an application which I intended to make to the Registrar as directed by the Chief Justice. Before I could make this application I was suspended.

There is thus no ground whatever for the contention of the Government of India that subsequent to the 28th February there was any unnecessary "delay" on my part. I may point out that when I eventually "surrendered" the record on the 6th, it was still not made up (for I had purposely done nothing to it in the interval), that in consequence it was over an hour and a half before Mr. Sheepshanks could give me even a provisional

receipt, and that it was not till a week after that I got the receipt in the usual form to which a person making over important papers of this kind is generally considered to be entitled.

I may say that I find it somewhat difficult to understand what is the theory of the High Court or of the Government of India with regard to my unwillingness to make over the record or to make the reference required by law. It can hardly be that I did not know when writing my judgment that I would have to make a reference, for I have been a Judge over six years; moreover the Government of India themselves point out that the judgment terminates with the words "the proceedings will be submitted to the High Court for confirmation of the sentence of death passed upon the accused, Sadak Ali." Nor can it be that I had written my judgment in haste, and repented of it; for as the High Court points out, I took 16 days to write it; "it is not as if he had in an unguarded moment given utterance to some ill advised expression"—my action was deliberate—I knew perfectly well all through what I was doing. After delivering judgment I took every step in my power to place the record before the High Court as quickly and as safely as possible, myself accompanying it to Calcutta for the purpose.

My attitude in the matter will appear from the following passages of my judgment (page 155* of the Paper-book).

"These matters will show the High Court and the public the good or bad faith of the executive authorities—of the Government of Bengal and of the Government of India.

"They will also show—and this is their relevance here—the meaning and point of Exhibit X18, for they show what the independence of the Judiciary in India really amounts to.

"The mills of God grind slowly, but they grind exceeding small; and I cannot but regard it as a very special dispensation of His Providence that the action of the executive authorities in this case has enabled me to represent these matters in such a manner that the High Court cannot avoid, *even if it wished*, taking judicial notice of them. . . . As for Sir John Woodburn's treatment of me, I confront the High Court with this dilemma, either I am not telling the truth, in which case I am not fit to try the King's subjects for their lives; or I am telling the truth, in which case Sir John Woodburn is not fit to be employed in the King's service."

It was very necessary that I should lay the case before the High Court, otherwise they would not be confronted with that dilemma. And the course on which I was taking them was one on which there was no running out. I knew well enough that the High Court would not thank me for bringing these matters to their notice; they would much rather have had the option of ignoring them. But my design was so to bring these facts to their notice that every one in India taking the slightest interest in public matters would be aware that they knew of them, and would be aware also if they shirked the responsibility of facing them—as in point of fact they have shirked it.

Under these circumstances I fail to comprehend why any one should accuse me of unwillingness to make over the record, it being essentially necessary from my point of view that the record should be made over. Still, that *is* the charge! And it is the *only* charge on which I was suspended, or which I have heard anything of till the 29th of June!

No doubt the Government of India repeat the vague accusation of "contempt" contained in the Registrar's letter. But they also do not indicate in what the contempt consisted; and it seems more than doubtful whether this contempt is anything else than the non-delivery of the record. If it is intended to suggest that I was impolite to Mr. Sheepshanks, all I can say is that I should very much regret it if I had been, but that I have met Mr. Sheepshanks privately several times since, and from his manner he does not appear to have any personal grievance against me.

So much for the arguments of the Government of India as to the merits of the charge on which I was suspended—a charge which the High Court does not wish to go on with, and which the Bengal Government makes no attempt to support, but which the India Government is unwilling to withdraw. But the Government of India not only attempts to support that charge on its own merits, but shows its own opinion as to the probable success of that attempt

* *Vide* appendix, page 256.

by adopting the contention of the Government of Bengal, that the executive authorities were not concerned with the merits of the charge, but were bound to adopt the recommendation of the High Court without question. "The Government of Bengal," says the Bengal Secretary's letter forwarding my memorial "formulated no charges against Mr. Pennell, because the High Court's letter recommending his suspension contained the grounds on which the recommendation was made, and rendered it unnecessary for this Government to do anything more than take the formal action of applying certain sections of the law.

" . . . . It is not the duty of the Lieutenant-Governor to enter on any discussion with Mr. Pennell as to the grounds of the recommendation contained in the High Court's letter, No. 600, dated the 4th March, 1901." Similarly the Government of India remark, "In our opinion it was not necessary that any charges should be framed, or that any explanation should be demanded from Mr. Pennell, before the order for his suspension was passed." In other words the High Court had only to recommend my suspension, and the Local Government was bound to suspend me.

It is, I submit, a sufficient answer to this contention to point out that the Local Government in suspending me purported to act under certain Acts, and that these Acts place the power of suspending me not with the High Court, but with the Local Government. Further, these Acts give the *High Court* the power of suspending certain subordinate Judicial Officers. It is clear therefore that the Legislature has drawn a distinction between these subordinate Judicial Officers and District Judges, whom the Local Government alone can suspend; but this distinction would be a distinction without a difference if the Local Government were bound in every case to carry out the High Court's recommendation without question. If the Legislature had intended that the High Court should decide whether a District Judge should be suspended, they would have vested the High Court and not the Local Government with the power of suspending him.

The defence which the Local Government have set up, and which the Government of India have adopted, seeks to transfer the responsibility for my suspension from their own shoulders to those of the High Court. And this defence, for the reasons given, wholly fails. It is the Local Government, not the High Court, which has suspended me. As I pointed out to the Government of India as early as the 18th March (letter, No. 2, Suspension, printed as an enclosure to the Bengal Government's letter, No. 124, A.D., dated the 19th May, 1901). "The recommendation of the Chief Justice or of certain Judges is obviously in itself an insufficient reason for suspending me; whoever may have recommended them to take the step, the responsibility for my suspension rests with the Local Government, and with them alone."

I would point out also that the responsibility of the Bengal Government, and of the India Government, which declined to interfere with its orders, extends much further than merely *suspending* me without enquiry on the recommendation of the High Court (which might possibly be justifiable in some cases of extreme urgency). Their case is that they were bound not merely to suspend me on the recommendation of a third party, but to keep me under suspension for an indefinite period, and without listening to anything I might have to say for myself. And on their own showing they did so keep me under suspension from the 4th March till the 23rd April; the Government of India declining to interfere with the orders passed by the Government of Bengal, and the Government of Bengal withholding the memorial in which I endeavoured to complain of those orders to His Lordship!

And if, as I submit there can be no doubt, it was the duty of the Local Government to form an opinion for themselves as to whether I should be suspended and kept under suspension—if the decision and the responsibility were theirs—then I would further submit there was a very special reason why they should have acted with the most extreme caution and circumspection. That reason was the strong personal interest which Sir John Woodburn himself had in the case for non-delivery of the record of which I

was suspended. As I had pointed out in my judgment, he or I had to go, and it is natural to suppose that the Lieutenant-Governor would prefer that it should be I who went, and not he; at all events he should, I submit, have appreciated the fact that the outside world were hardly likely to consider him an ideal tribunal, and that it was desirable that he should avoid not only all unfairness, but all appearance of unfairness towards me. I submit that on his own showing he has acted on the statement of a third party made behind my back, and has refused me any opportunity of refuting that statement.

I may add that Sir John Woodburn must from a very early stage, if not from the first, have been aware of facts which rendered the charge of unwillingness to make over the record a very improbable one, which should, at all events, have suggested to his mind that there was a possibility of a misunderstanding, and that it was fair to give me a chance of clearing it up. From the correspondence annexed to your letter it appears that the two Governments are in the habit of reading the newspapers. With the exception of the "Englishman," which in these matters is more or less under Government control, there is hardly a newspaper in Calcutta, English or Native, which did not comment on my suspension; and there were very few which had a word to say in support of it. The "Indian Mirror," which is edited by an eminent barrister (who shortly after presided over the Bengal Provincial Congress) urged that my suspension was not only wrong on the merits but illegal, and that I had good cause of action against the Local Government. So early as the 11th of March the "Bengalee," the organ of the Honourable S. N. Banerjee (who has been nominated by the Bengal Legislative Council for a seat on the Imperial Council), in an article dealing exclusively with the merits of the case pointed out how grossly improbable *primâ facie* the charge of withholding the records was. "Was Mr. Pennell," it said, "guilty of gross misconduct in withholding the records of the Noakhali murder case? Apparently Mr. Pennell came all the way to Calcutta from Noakhali, accompanied by his Sheristadar and his Sessions Clerk, with the express purpose of handing over in person the records of the murder case to the High Court. Mr. Pennell rightly or wrongly believed that the executive were doing their utmost to burke all inquiry into Mr. Reily's case, and in order successfully so to burke it, the executive would necessarily try to secure an acquittal in the murder case out of which has arisen the case against Mr. Reily. Whether Mr. Pennell's belief was well-founded or not, whether Mr. Pennell's belief was right or wrong, are questions with which we are not at present concerned. It is sufficient for our present purpose to find that such a belief did exist in Mr. Pennell's mind, and Mr. Pennell thought, whether rightly or wrongly it does not matter, that the Exhibits in the murder case were documents with which it was the interest of the executive to tamper, in order successfully to spoil the murder case. It was, we think, on account of these beliefs, that Mr. Pennell thought it necessary to take special care to see that the records reached the High Court safely, and that on their way to the High Court the executive had no opportunities of getting at them. And it was with this object in view that instead of transmitting the records through the usual channels, Mr. Pennell thought it necessary to bring them in person to the High Court. The whole object of his visit to Calcutta, therefore, was to make over the records to the High Court. It is unaccountable, therefore, that Mr. Pennell should without any cogent reason decline to make over the records to the High Court as he is said to have done. Besides from a perusal of the judgment in the murder case (in respect of the merits of which, for obvious reasons, we reserve our comments for the present) it is clear that Mr. Pennell has raised a number of issues on which he wants the decision of the High Court. It is clear, therefore, that he would be most anxious to see the records safe in the possession of the High Court; and that we consider to be another and a stronger reason for his not declining to make over the records to the custody of that Court. And yet the distinct allegation against Mr. Pennell is that he declines to comply with the High Court's order to make over the records of the murder case!" These are native newspapers. But the "Statesman," the most largely circulated English newspaper in India, had a leading article about the end of March condemning my suspension; the

"Indian Daily News," in publishing a press communique on the 6th March as to the cause of my suspension, said that this was the "official version," and added later that it was not very clear how I came to be suspended; while "Capital," the leading financial paper in India, in an article which the "London Times" has thought worthy of notice, remarked (in its issue of 4th April) "We have the spectacle of the Judges of that Court (the High Court) requesting the Government of Bengal to suspend Mr. Pennell for refusing to deliver up the records of the case, when it was as clear as noon-day to the meanest understanding that Mr. Pennell was only too anxious to do so, to some properly authorized officer."

Yet the Lieutenant-Governor, aware as he must have been how his motives were likely to be construed, not only kept me under suspension on this charge, but refused to give me a hearing. The Government of India endorsed and approved his action. And laudable as they now make out that action to be, it seems to have been the predominant idea of both Governments to prevent His Lordship from getting to know of it!

I have dealt with the arguments advanced by the two Governments in support of the charge, and in defence of their own action with regard to it I will now turn to the High Court, and will show whether or not *they* have proved the charge.

All I think I need say is that I do not *admit* the charge, that it does not prove itself, and that the High Court have refused to offer any evidence in support of it. They have not had the manliness to withdraw it and acknowledge themselves in the wrong, but they decline to go on with it.

They purport to have acted not on their own knowledge, but on a report—oral or written, I know not—of Messrs. Chapman and Sheepshanks. That report has never been brought to my notice or otherwise made public.

They do not profess to have given me any notice of the action they were taking against me or any opportunity of showing cause against it—the very first thing I submit that any person or body acting *judicially* would do.

The Bengal Government, in forwarding my memorial of the 29th April, say that my statement (in paragraph 9 thereof) that I had "neither notice nor knowledge of the proceedings of the High Court" is altogether incorrect, for that I had received a copy of the Registrar's letter to the Chief Secretary. As immediately before that statement I had referred to the Registrar's letter, it will, I hope, be clear to His Lordship, and it should, I submit, have been clear to the Government of Bengal, that I did not mean to deny receipt of that letter (which is indeed enclosed with my memorial) but to say, as I say now, that I was not apprised as I should have been of the proceedings held by the High Court before that letter was despatched.

I submit that it is no ordinary departure from the principles of justice usually recognised by our Courts which the High Court of Calcutta have taken in this case; and I would further submit that their action in trying me for my alleged "misconduct" in secret, and without giving me a hearing is opposed, not only to natural justice, but to positive law. To show this I cannot I think do better than insert here an article which appeared in the "Bengalee" of the 14th March written, I understand, by a native barrister of long standing. Not only are the arguments cogent, and, indeed, conclusive, but their publication at that early date will show His Lordship, *first*, that those arguments must have been present to the minds of the High Court and of the two Governments from a very early stage of the period of my suspension; *secondly*, what the people of the country are likely to think of proceedings such as these.

"THE BENGALEE."

Thursday, March 14, 1901.

MR. PENNELL'S SUSPENSION.

III.

We have seen that the law, as embodied in Section 26, Cr. P. Code, and Section 31, Bengal Civil Courts' Act, does not apply to Mr. Pennell's case, even if the most extreme

view was taken of the facts to which that law has been sought to be applied. We have seen besides that those facts, at least so far as they are at the present moment in the possession of the public, do not warrant the inference of "gross misconduct and insubordination" on Mr. Pennell's part. But we are told that Mr. Pennell has been suspended from his office by the Local Government on the recommendation of the High Court. And we shall now proceed to examine into the circumstances attending the inquiry into Mr. Pennell's conduct by that Court which resulted in that recommendation. We are informed that the learned Judges held a meeting *in camera*, and that at that meeting a majority resolved to recommend Mr. Pennell's immediate suspension to the Local Government. And we are told besides, that at that meeting of the Judges Mr. Pennell was not present. If these facts are true, it is clear (1) that the High Court constituted itself on this occasion into a secret tribunal for judging what must appear to everybody to be a most important case; and (2) that the High Court on this occasion departed from its ancient traditions, and, in direct opposition to the first principles of British jurisprudence, has condemned a man unheard. Now, let us see if the High Court was legally justified in deciding Mr. Pennell's case *in camera*.

If we look into the provisions of Section 33 of the Bengal Civil Courts' Act, under which the High Court is vested with the power to suspend Munsiffs from office, we shall find in the first place that the High Court "may appoint a Commission for enquiring into the alleged misconduct of any munsiff," and "on receiving the report of the result of any such inquiry, the High Court" may suspend such munsiff. It is clear, therefore, from Clause I of Section 33 of the Bengal Civil Courts' Act, that the High Court may in the case of a munsiff appoint a Commission of inquiry. That Commission after inquiring into the matter has to send in to the High Court a report embodying the result of such inquiry. The Commission appointed under the provisions of this section, while inquiring into the case of misconduct, must do so in the ordinary way, that is, by recording evidence. And it goes without saying, that the report of the Commission on which the High Court is to act, must be based on that evidence. So that it is clear from the law itself, that in the case of munsiffs accused of misconduct, if the High Court appoints a Commission of inquiry, that inquiry must be a judicial inquiry, in which evidence is to be recorded and a report is to be submitted based on that evidence. The last clause of Section 33 of the Civil Courts' Act, lays down that "the High Court may, without appointing any such Commission, remove or suspend, &c." Reading the two clauses together, it is clear that the High Court in suspending a munsiff, must either inquire through a Commission or inquire by itself into the charge of misconduct against a munsiff before it can suspend such munsiff from his office. That is, in either case, whether there is a Commission appointed or not for the purpose, the High Court must make an inquiry into the charge of misconduct against a munsiff before such munsiff could be suspended. And an inquiry by the High Court can only mean a judicial inquiry. The English Committee of the High Court is an administrative body, and if the English Committee has to make an inquiry into any matter, that inquiry need not be a judicial inquiry. But the English Committee is not the High Court. And the law, if we are correct in our view of it, makes an inquiry into the charge of misconduct against a munsiff obligatory on the High Court. And in this connection we cannot do better than to quote the words of Mr. Justice Dwarkanath Mitter, reported at page 212 of the "Weekly Reporter," Vol. XVIII. That learned Judge said :—

"The word High Court used in the 33rd Section of the Bengal Civil Courts' Act ought to be interpreted to mean the High Court acting in its judicial capacity; and the very nature of the ground upon which alone that Court can proceed against a munsiff clearly shows that every action taken by it under that section must be taken in a strictly judicial manner. To find a person guilty of misconduct, otherwise than in a judicial manner, is not the province of a Court of Justice." Now, it is clear from the above quotation that in the case of munsiffs when it has to decide under the Bengal Civil Courts' Act the High Court always acts in its judicial capacity as a Court of Justice.

And it follows as a corollary to this proposition that in such cases the High Court, being a Court in every sense of the term, has not the power to decide such cases *in camera* and *ex parte*. The High Court has power under this Chapter of the Bengal Civil Courts' Act under Sections 32, 33, and 34 only. Section 31 of the Bengal Civil Courts' Act does not confer any powers on the High Court. And it is only under Section 31 of that Act that a District Judge can be punished with suspension or removal for misconduct. This section gives the Local Government power to suspend or remove all judicial officers except Judges of the High Court, and the following sections give power to the High Court to suspend all judicial officers other than district judges, while Section 33 gives power to the High Court not only to suspend but also to remove, if necessary, a munsiff from his office. In respect, therefore, of Section 31, it is clear that if the High Court wants the Local Government to take any action under that section against a district judge, the High Court is in the position of an advising body. But whether it is an advising body or not, it is always a Court. And as a Court it is always a judicial tribunal. Whether it advises the Government to take a particular action against an offending district judge or whether it decides cases which come before it, in every capacity and at all times the High Court is first of all a judicial tribunal. And, therefore, even when merely advising the Local Government the High Court must base its advice on grounds arrived at in a judicial manner by a judicial inquiry; for the judicial characteristic is inseparable from the very constitution of the High Court, and what we have said of the High Court in relation to the provisions of Section 31 of the Bengal Civil Courts' Act is equally true of that Court in relation to the provisions of Section 26 of the Code of Criminal Procedure. For under hat

section also it is the Local Government alone which has the power to suspend or remove a sessions judge from his office. Now, from what we have said it is clear that if the High Court advised the Local Government to suspend Mr. Pennell under Section 31 of the Bengal Civil Courts' Act and under Section 26 of the Code of Criminal Procedure it was incumbent on the High Court to hold a judicial inquiry into Mr. Pennell's case, for the advice of the High Court to the Local Government in order to be legal was bound to be based on a judicial inquiry. We must, confess, therefore, that we cannot help thinking that the meeting of the Judges *in camera* and the recommendation to Government for the suspension of Mr. Pennell, which was the result of that meeting, were *ultra vires*.

In respect of the second point that we have raised in the article, it follows as a necessity, if what we have said, about the constitution and powers of the High Court in dealing with the first point, is true. If the High Court is at all times a judicial tribunal, if the High Court could not under the law advise the Local Government to suspend Mr. Pennell without holding a judicial inquiry into Mr. Pennell's case, it must follow as a necessary consequence that the High Court, before advising the Local Government to suspend Mr. Pennell, was bound to hear him in his defence. It is highly repugnant to all our notions of justice and of fairplay that an accused person should be convicted unheard and the law, in laying down the principle that no man shall be condemned unheard, has only voiced the feeling which is present in every man, that every accused person should be heard in his defence before he is convicted of an offence. And certainly it is the duty of every Court of Justice, and therefore, of the highest Court in the land to see that this principle of law is kept inviolate in every case. The new departure, therefore, made by the High Court in Mr. Pennell's case of condemning him unheard has come as a painful surprise to the public. It cannot be said that the exigencies of the occasion demanded prompt action on the part of the High Court, and as time was of the utmost consequence in this case that Court was justified, in view of the urgency of the case, in departing from its ordinary practice. There is nothing in the facts of the case so far as they have transpired up till now, which shows that a great and irreparable evil attended with consequences of serious import to the public weal would have followed, if Mr. Pennell had not been immediately suspended from his office. In view, therefore, of all the circumstances of the case we are driven irresistibly to the conclusion that the action of the High Court in Mr. Pennell's case has been, to say the least, unfortunate in the extreme, and it is all the more unfortunate because it is giving rise in the public mind to vague surmises which are unpleasant on account of their very vagueness. Hitherto the public have always looked upon the High Court as their only safeguard, their only protector against an all powerful Executive. And it will not be to the interests of good government that such an impression should be removed from the public mind.

To put the case briefly, the finding on which the High Court's recommendation for my suspension was based—the "opinion" expressed in paragraph 4 of the Registrar's letter "that Mr. Pennell's behaviour in this matter amounts to misconduct within the terms of Section 26 of the Code of Criminal Procedure, 1898"—could not be arrived at, under the law, without a *judicial* enquiry; for, as Mr. Justice Dwarkanath Mitter *judicially* held, "to find a person guilty of misconduct, otherwise than in a judicial manner, is not the province of a Court of Justice."

And to show that the feeling of distrust and suspicion which this unprecedented procedure of the High Court engendered was not confined to the native community, I cannot do better than continue the quotation from "Capital" to which I have already referred. After alluding to the High Court's recommendation and to a previous act of the Chief Justice's, to which I shall have to advert later on, the article proceeds "The consequence (of these proceedings) is that an impression has been created that the Chief Justice has made an unholy alliance with the Government of Bengal, whereby the support of the High Court will be given to the Executive acts of Government in preference to the furtherance of law and justice" ("Capital," issue of 4th April, "Some aspects of the Pennell case").

There is yet one other aspect of the High Court's action to which I desire to invite His Lordship's attention—it is the extreme and *primâ facie* unaccountable anxiety that I should not only be suspended, but suspended *at once*. This anxiety is reflected in the peremptory terms of the Registrar's letter. The Chief Secretary is requested to *immediately* lay the matter before the Lieutenant-Governor; the Registrar is to recommend that the Local Government do *immediately* issue an order for my suspension, and to request that the Court may be *at once* informed of the orders issued. Such language, I submit, is hardly decorous or dignified, especially when addressed to an authority who, *quoad* the matter in hand, was in no way subordinate to the High Court, and in no way bound to accept their recommendation.

This anxiety of the High Court (or rather of a majority of that body) for my *immediate* suspension, should I submit, be considered in the light of two other circumstances—the first, their unwillingness, on the face of it quite unaccountable, that I should come to Calcutta, the second, the equally unaccountable, and also inconsistent, anxiety of the Criminal Bench to get the record out of my possession.

The Bengal Government say (paragraph 7):

"Mr. Pennell, having delivered his judgment, by which one man was sentenced to death and two to transportation for life, applied on the 20th of February for casualleave. His application was received on the 23rd, [I may note that it must in the ordinary course of post have been received early on the 22nd, but this is detail] and in accordance with the usual practice, the High Court were asked by this Government whether Mr. Pennell's application should be granted. On receipt of their reply to the effect that his application should not be granted at present, Mr. Pennell was informed accordingly. Thereupon Mr. Pennell . . . . . came to Calcutta. I was then directed to ask the High Court on the 2nd of March whether they had given Mr. Pennell any leave to come to Calcutta, and whether it was their wish that he should remain in Calcutta or be ordered back to his station, Noakhali, which he had left without orders. The High Court replied that they had not given Mr. Pennell leave; that they did not wish that he should leave Noakhali at present for various reasons, one of them being that the record of the capital sentence case had not up to the 1st been received by the High Court: and that in their opinion he should be ordered to return to Noakhali at once. Thereupon Mr. Pennell was ordered, in my letter No 1480A.B., dated the 3rd of March, to leave Calcutta at once and return to Noakhali. He did not obey those orders."

The Bengal Government apparently wishes to suggest that it was unseemly for me to apply for casual leave after delivering judgment in a murder case. If that is their suggestion I would point out that Sessions Judges in Eastern Bengal are constantly trying murder cases—if I have tried one such case I have tried a hundred; when I was Additional Sessions Judge of the neighbouring District of Backergunge in 1895-96, I did little else but try such cases. It was never then considered a reason for prohibiting me to come to Calcutta, on days on which my Court was closed, that I had just delivered judgment in a murder case. The Criminal Bench of the High Court, who profess to have been so anxious to take up the case, did not think proper to curtail their Easter vacation (which was a week longer than that of the ordinary Courts) by a single day for that purpose. My leaving my station would not delay the submission of the record, for first, as pointed out in my letter applying for leave, the days of my absence were all (except one) public holidays; secondly, I intended taking the record with me to Calcutta.

No doubt this latter fact was not stated in my letter asking for casual leave, nor was it stated where I meant to go. As I have informed His Lordship in my memorial of the 21st March, the reason why I thought it necessary to take the record to Calcutta myself was that I feared Sir John Woodburn would tamper with it if I sent it in the ordinary way. For this very same reason I did not at first say what I proposed to do, hoping that perhaps he might not guess it.

The Government of Bengal say that their referring my application to the High Court was "in accordance with the usual practice." I am constrained to point out that under the Circular they had just issued (vide their paragraph 5 and enclosure No. 21) no such reference is necessary or contemplated. The real reason why they made any such reference is, I would submit, that they wished to shelter themselves behind the High Court. And I would further submit that the terms of their letter of reference and of the High Court's answer are not given, nor is it clear whether the reference was official or demi-official, or whether the "High Court" means anything more than Mr. Justice Rampini, as it meant in December last (vide Mr. Chapman's telegram, Exhibit X9 of my judgment, page 103* of the High Court's Paper-book, Part II.). It is not, perhaps, a very violent presumption that the Government of Bengal arranged beforehand with the "High Court" how their reference should be answered.

Be that as it may, the "High Court" in recommending that my application should not be granted at *present*, were aware:—

1. That the days for which I sought leave were all (with one exception) holidays.

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* *Vide* page 337.

2. (If a copy of my application was sent them) that I alleged that I had been "hard at work continuously, Sundays and all holidays included, ever since my return from Calcutta after the New Year."

And if (which is not clear) their reply covered the second of my applications, they were unwilling that I should be absent from my station even on days on which I was not expected to work.

I would further point out that in recommending that my application should not be granted *at present*, the "High Court" must have been well aware that they were practically negativing it altogether, for there were no more holidays for a considerable time, and if I had applied for casual leave later on, the Government would have at once refused it on the ground that I had work to do, and that under Rule (1) of the Circular "Casual leave can only be allowed consistently with the requirements of the public service."

The Government of Bengal have suppressed their letter of the 2nd March to the High Court. In enclosure No. 33 of their letter, No. 123, A.D., of 9th May, 1901, they state, however, that they referred my letter of the 28th February to the High Court. When, therefore, the High Court sent the reply of which the Bengal Government purport to give the terms, the High Court must have been aware—

1. That I alleged that I was in bad health.
2. That I had produced a medical certificate, or rather a letter tantamount to one.
3. That my absence from Noakhali could not possibly do any harm.
4. That I was bringing the record of the capital sentence case to Calcutta with me.

It is difficult, under these circumstances, to account for the High Court's action in advising that I should be refused leave, still more in putting forward as one of their reasons (and, indeed, apparently the *only* reason which they cared to publish, or at all events the only one which the Bengal Government cares to make known to the world) the fact that they had not received the record of the capital sentence case.

To order me to return to Noakhali *at once* was certainly not the means best adopted to get the record, for if I had complied with that order I should have had to take it back with me, and even if I had despatched it from Noakhali the moment I arrived there, the High Court could not have got it for several days. As I have pointed out in my memorial, the order (and I may say *all* the orders given to me at Calcutta) was given me *late at night*, and there is but one train a day to Noakhali (or rather to Feni, the Railway Station for Noakhali), which leaves in the very early morning.

The action of the High Court, I submit, indicates a desire on their part *not* to get the record of the capital sentence case, but first, to keep me away from Calcutta, and later, when I had arrived there, to get me out of it as quickly as possible. They advised that I should be ordered to return to Noakhali *at once*; they did not wish that I should leave it at present "*for various reasons.*" I shall endeavour later on to indicate to His Lordship one of these "various reasons."

But before doing so I will point out that in the letter of 4th March, suspending me, the Local Government once more directed me to proceed to Noakhali *at once*, and await these any further orders. This last order was not based on any recommendation of the High Court, for as soon as I was suspended, I became a private person, and it seems to have struck even the High Court that when I was no longer a Judge it was no concern of theirs where I was, at all events that it would be unseemly for them to publicly express a wish to get me out of Calcutta. Perhaps for this reason it may have been stipulated that Sir John Woodburn, who had heretofore sheltered himself behind the High Court, should at last show his own hand. At all events the Lieutenant-Governor, who hitherto had based his orders to remain at

Noakhali and to return there entirely on the advice of the High Court (to judge from his letters he would have been quite willing that I should come to Calcutta, only the High Court would not agree to it), now, *of his own accord,* ordered me to return to Noakhali *at once.*

My failure to comply with this latter order is made the basis of a charge of insubordination. With this charge I will deal later; here I only wish to point out how unreasonable, on the face of it, the order was. As I was suspended I could do nothing at Noakhali if I went back there; the Government knew that I was in bad health, the result of my protracted stay there, and that returning there would inevitably make me worse; while, as for my awaiting orders there I may point out, first, that if I had complied with their order I should be awaiting orders at Noakhali at the present moment; secondly, that if they had really meant to give me any further orders, I was only a few hundred yards from them at Calcutta, and could have got those orders in five minutes, while at Noakhali I should be over 300 miles away, and every letter which passed would take two days in transit.

I submit that the order to return to Noakhali at once was issued by arrangement with the High Court, which, as I have pointed out above, had already betrayed an eagerness to get me out of Calcutta quite inconsistent with their ostensible anxiety to try the capital sentence case as quickly as possible. And I would now draw attention to the action of the High Court in calling for the record of the case.

The letter, elsewhere styled a "proceeding," which was handed me by Mr. Sheepshanks on the 4th March is not reproduced among the voluminous papers enclosed with the Government of India's letter. Enclosure B. of this letter is a copy of it.

As I have pointed out in paragraph 11 of my second memorial, this "proceeding" is not sealed. I call attention to this fact not to prove that the proceeding is invalid (although in law the absence of the High Court's seal does invalidate it) but simply to show that it was issued in a hurry. Further evidence of this is to be found in the fact that the essential word "deliver" was originally omitted, and has had to be written over the line.

Further, the order directs me to deliver the record *now in my possession* forthwith. The High Court wanted not the whole record, but any part of it *in my* possession; and they wanted that part *forthwith.*

The Court profess to have acted on the Sessions Statement of my Court for the month of January. But that Statement was despatched on the 16th of February, and must have reached them on the 18th of February. How it "turned up" on the morning of the 4th March, unless they specially asked for it, does not appear.

Nor does it appear why even with that Statement before them, they thought it necessary to call for the record. There had been no unusual delay. The parties affected by my judgment had a right of appeal, and it is unprecedented, in my experience, for the High Court to call for the record of an appealable case before an appeal is preferred. The accused had not appealed, and till they appealed, or the High Court knew that they refused to appeal, the High Court could not deal with the case, even though the record was before them. As regards two of the three convicted men, viz., Aslam and Anwar Ali, they could not deal with the case at all unless those men appealed. (I may say parenthetically that not infrequently men convicted of murder, and sentenced to transportation for life, do not appeal, as they run the risk by so doing of getting the sentence enhanced to death. In this very case Sadak Ali has not appealed against Mr. Geidt's sentence.)

No complaint of delay had been made to the High Court by any of the accused, who alone would be injured by such delay. Further, the High Court must have known that they would soon get the petition of appeal of Sadak Ali, who had been sentenced to death, for he only had seven days plus the period required to get copies to appeal in, and as the High Court knew that I had brought away at least the essential parts of the record with me on the

28th February, they might reasonably have inferred that the copying had been completed by that date, and that within 7 days of the 28th February, Sadak Ali would present his appeal either to them or to the Jail Superintendent for transmission direct to them.

They knew they would soon get the record, for they knew I had brought it to Calcutta to make it over to them. They were not in a position to take up the case, even with the record before them. No application had been made to them in connection with the case. Yet they not only called for the record—in itself a very unusual proceeding—but took the steps, unprecedented, so far as I know, of sending the officiating Registrar himself for it, of ordering me to deliver it to him *forthwith*, and of expressly limiting their call to " the record now in your possession.".

Further, I would point out that when they got the record the High Court showed no effective desire to take up the case. Sadak Ali's appeal was signed at Noakhali on the 2nd of March, and must have reached them on the 5th or 6th at latest, but the case was not taken up till the 10th of April, and judgment was not delivered till the 17th of April. I shall submit hereafter my reasons for believing that the trial was purposely delayed to permit of hearing from England—all I need say here is that at all events it was not pushed on, and that if my small staff could copy the record three times over in 13 days, the High Court could if they had chosen to have got it printed in something less than 22.

It does not appear, therefore, that the desire of the High Court to at once get " the record now in your possession " is accounted for by any anxiety on their part to accelerate the hearing of the appeal, which had not then been even preferred. And I submit that the real reason why the High Court wanted to get the record from me was that so long as I had that record I had a very good excuse for remaining in Calcutta, and that they were resolved at all hazards to get me out of Calcutta as soon as possible.

It is now, I think, time that I should indicate to His Lordship the reason of the High Court's anxiety to get me out of Calcutta, and explain how it was that that Court came to advise and Government to adopt the course of summarily suspending me, a course which they have had so much difficulty in excusing, which the Government of India alone has thought capable of defence, a course which had the effect, and which it might have been foreseen would have the effect, of rallying all sections of public opinion to my side—of intensifying public interest in a case in which it was the obvious advantage of the executive authorities that public interest should subside—of at once destroying the High Court's credit (a credit which it was vital from the executive point of view to maintain for the purposes of this case) for judicial impartiality—of producing among Europeans and natives alike the impression to which the most outspoken organ of the European commercial community has given voice—the impression " that the Chief Justice has made an unholy alliance with the Government of Bengal, whereby the support of the High Court will be given to the executive acts of Government in preference to the furtherance of law and justice."

The reason, or rather the reasons, are succinctly set forth in paragraphs 3 and 6 of my " disrespectful and improper " memorial of the 21st of March—the Memorial which the Bengal Government withheld—which they were so angry with me for sending His Lordship a copy of—the memorial His Lordship's reception of which was so anxiously awaited by the Bench, which had to try the murder case and the Reily appeal. They were:—

1. Sir Francis Maclean's extrajudicial action on the 17th of February in wiring to me to release Mr. Reily.

2. His extrajudicial action on the 3rd of March (the day before I was suspended) in attempting to get the record from me surreptitiously.

The second of these extrajudicial acts was the result of the first; Sir Francis Maclean wanted to get the record from me so as to deprive me of any excuse for remaining in Calcutta, and the reason why he was so anxious to

get me out of Calcutta was to prevent the first act's becoming known. It may even have been his intention to get hold of the telegram of the 17th February and make away with it.

The telegram, I may say, though despatched on the 17th February, and answered by me the same day, was not made public till the 11th March, when the following brief paragraph appeared in the "Bengalee."

Re MR. REILY'S BAIL.

Among the papers which have been placed at our disposal in connection with the Pennell case, is the following urgent telegram which was addressed to Mr. Pennell by the Registrar of the High Court on the 17th February last, which was a Sunday :—

"The Chief Justice wishes to know why bail has been refused in Reily's case, and urges you to carefully reconsider the matter."

This telegram was addressed to Mr. Pennell before application for bail on behalf of Mr. Reily had been made to the High Court.

The "Bengalee" did not think any further comment necessary; but the comment was speedily forthcoming elsewhere. I may point out that Mr. Reily's case was regarded on all hands as a political one—the "prestige," or what they are pleased to consider such, of the executive was at stake—and I shall, I think, have little difficulty in convincing His Lordship hereafter that the Chief Justice in this matter acted at the instance of the Lieutenant-Governor. Under these circumstances I see no reason to modify the remark contained in paragraph 3 of my first memorial—the remark that "I am confident that your Lordship's legal advisers will assure you that Sir Francis Maclean's action in sending me the telegram was an illegality of so flagrant a nature as to justify his being disbarred."

And I may add that it was for some time contemplated in Calcutta to call a general meeting of the Bar, if not indeed a public meeting of the citizens, to denounce Sir Francis Maclean, and that he only escaped such denunciation by requesting Mr. Justice Banerjee to express his regret and contrition to the Secretaries of the Bar Associations, a fact which was not only announced in the papers shortly after, but for which I have the authority of Dr. Rash Bihari Ghose, the leader of the Vakils' Bar.

What action His Lordship will take in this matter remains to be seen; but I think he will perceive that it was a matter which Sir Francis Maclean had a very strong motive for hushing up. It is easy to hush up things in an Oriental country. Sir Francis Maclean's action was, no doubt, known to my office at Noakhali—but Noakhali is the most isolated station in Bengal; it was not likely that even a rumour of the matter (which, if spoken of at all, would be spoken of with bated breath) would reach Calcutta, while no newspaper would have ventured to make the most distant reference to it without the strongest possible evidence of its truth. So long, however, as I was in Calcutta there was in Calcutta a person who knew of the matter, was, presumably, aware of its importance, had a strong motive for making it public; was suspected to be in touch with several of the leading organs of public opinion, and last, but by no means least, was not afraid. And so I had to be got out of Calcutta at any cost.

The Chief Justice knew, however, that it was not at all likely that I would leave Calcutta while I had the record with me, so it was necessary he should get it at once. He had no jurisdiction to call for it, for he was not a member of the Criminal Bench. The other Judges of the High Court were, presumably, as ignorant of his having sent me the telegram as the general public; the only person besides himself who knew of it was Mr. Chapman, who, at the time of its despatch, was Registrar. (The telegram, I may point out, was despatched by Mr. Chapman on a Sunday morning, not from the business quarter of Calcutta, but from the Park Street telegraph office, near which Mr. Chapman and Sir Francis Maclean both reside.) Mr. Chapman was no longer Registrar; he was on leave, and had been succeeded as Registrar by Mr. Sheepshanks; further, his services had been replaced at the disposal of the Local Government, by which, on the expiry of his leave, he was appointed to officiate as a District and Sessions Judge. But it was to Sir

Francis Maclean's interest to take no more persons into his confidence than was absolutely necessary, and so the person whom he employed to get the record from me was not Mr. Sheepshanks, the Officiating Registrar, but Mr. Chapman, the Indian Civil Servant on leave.

Late on the evening of the 2nd March, I received from Mr. Chapman an invitation to dinner for the following night. Enclosure C. is a copy. I am reluctant in defending myself to say a word more than is necessary against other people, but Mr. Chapman's subsequent conduct both with regard to this invitation to dinner and otherwise has been so extraordinary that I submit to His Lordship that it is not a very far-fetched supposition that this invitation to dinner was a trap, intended to lull any suspicion I might have of Mr. Chapman, and to put me off my guard. In advancing such a supposition I may be doing Mr. Chapman a grave injustice—but it is necessary that I should put His Lordship in possession of *all* the facts so far as they seem to me material—and I submit that His Lordship will, when he proceeds a little further agree with me that if I am doing Mr. Chapman an injustice, Mr. Chapman has only himself to blame for it.

I may remark that though I am slightly acquainted with Mr. Chapman, I had never called on him or on his family, and Mr. Chapman has himself adverted to the fact that he was unacquainted with my sister, who had come to Calcutta with me, and was included in his invitation. It was a time when many members of my service were looking on me askance, for it was known to every one that I was engaged in a contest to the death with the head of the Local Government, and the Indian environment is not conducive to moral courage. Under these circumstances the natural result of Mr. Chapman's letter would be to induce in me the belief that however much other people might turn against me I had at least one very good friend in Calcutta, and that was Mr. E. P. Chapman, of 4 Middleton Street.

I at once accepted Mr. Chapman's invitation.

What happened on the next day (Sunday, the 3rd March) is succinctly stated in paragraph 6 of my first memorial (that of 21st March) but it may be as well that I should recapitulate the facts here and add some circumstances then omitted as of less importance.

Between the hours of eleven and twelve a.m., Mr. Chapman called on my sister at our hotel, and after staying some time went away, with the remark, "I must go and look your brother up. I want to see him about some records." These facts are stated in an affidavit sworn by my sister on the 4th March, of which Enclosure D. is a correct copy.

I was away when Mr. Chapman called, but returned almost immediately after he left, and was told by my sister that he had just gone to look for me. I thought he would probably have gone to the United Service Club, so I followed him up there, and found him just getting out of his *ticka gari* (cab). I returned with him to the hotel, and he was with me in my room there for fully half an hour.

He told me Sir Francis Maclean had sent him for the record and showed me an autograph letter from Sir Francis Maclean directing him to get it from me. I held out my hand for the letter, but he kept it to himself and said he was not supposed to show it to me. He allowed me, however, to read it, keeping it in his own hands. There was nothing in the letter itself forbidding him to show it to me, so I submit instructions to that effect must have been given to him verbally. The letter was on the High Court's demi-official note paper; it began "My dear Chapman, and ended

Yours sincerely,

F. W. MACLEAN,"

and was in the same handwriting as the letter subsequently handed me at the Chief Justice's house.

I asked Mr. Chapman if it were not rather irregular that I should make over a record, especially an important record, in this way, and pointed out to him that forms were really of great importance in our law. I referred to a

book—Hearn's Government of England—which I had studied when reading for the Law School at Oxford, and told him the whole *gist* of that book was the way in which the nominal powers of the King, Ministers, Courts, &c., were circumscribed and limited by the necessity of observing forms.

I may explain that I took this line of argument because I did not want Mr. Chapman, whom I regarded as a friend of mine, to think that I was raising frivolous objections, and thought that to a man like Mr. Chapman, who, I believe, knows no more law than the very small modicum required for the departmental examinations, it might appear quite sufficient that the Chief Justice had need of the record.

To His Lordship, however, I need make no scruple of submitting (as I have already submitted in paragraph 6 of my first memorial) "that Sir Francis Maclean or the Chief Justice of Bengal (if it be assumed that he was acting officially) has no power to send for records in this way, and that his action was both illegal and improper." I may add that even if Sir Francis Maclean had been a member of the Criminal Bench—which he was not—he could only have called for the record *legally* with the concurrence of the other member of that Bench, and with the use of the High Court's seal—with forms which ensured that very *publicity* which he was so anxious to avoid.

Mr. Chapman seemed impressed with my arguments, and admitted the fact—an additional matter of suspicion—that he was no longer Registrar. He said that he had made over charge to Mr. Sheepshanks, and was on leave, though he had remained in Calcutta for a few days at the Chief Justice's request "to do odd jobs." The fact that Mr. Chapman had ceased to be Registrar was, I may say, known to me before, but in fairness to him I should here state that he volunteered it. His making the Chief Justice give him a letter for his own protection (for he was not supposed to show it to me) also, I submit, indicates that Mr. Chapman, from the first, had his doubts as to the propriety of what he was doing.

I told Mr. Chapman I had no objection to showing him the record, which was lying loose in a box of mine, and that I should indeed like to show him some of the Exhibits, as the more people saw them before they passed out of my hands the better it would be for me. He said that he believed Exhibit X 28 was in Major Strachey's handwriting, but added—like Moulvir Zakir Husain in the Chupra case—that he did not know Major Strachey's handwriting well. He admitted, with reference to Exhibit X 32, that he knew Mr. Bolton's handwriting well. Finally, he suggested that if I did not care to make over the record to him, I should take it to the Chief Justice's house, and make it over to the Chief Justice myself. I said that before doing anything, I would consult Mr. P. L. Roy, who I may say has the largest criminal practice in Calcutta, was formerly Legal Remembrancer to the Government of Bengal, and had for many years been a very intimate friend of mine. And Mr. Chapman and I agreed together that I should be taken to have told him that I would consult Mr. P. L. Roy before giving him a final answer. Mr. Chapman then went away. I submit that it is probable he went to the Chief Justice or, at all events, informed him what had happened. That he made no secret of the fact that I had shown him the record will appear from the "proceeding" issued by the Criminal Bench the next day. It is not unlikely however that he kept back from the Chief Justice his own suggestion that I should bring the record in person. Soon after Mr. Chapman left I went to Mr. P. L. Roy's and consulted him as to Mr. Chapman's suggestion. He advised me to go at once to Sir Francis Maclean's and make over the record to him—he did not think, he said, that any one could blame me for doing so, as even though the Chief Justice's action was informal, still he was the highest judicial authority in the country.

Whatever may be thought of the merits of this advice, I decided to act upon it. If any excuse be held necessary, I would submit that I did not see then a great many things which I see now. It was to my interest that the Chief Justice should be impartial in the Reily case, and it was natural, therefore, that I should be slow to believe the contrary. By sending me the telegram of the 17th February the Chief Justice had placed himself, to a certain

extent, in my hands; and though Mr. Chapman's procedure was certainly somewhat mystifying the mystery might, for all I knew, have been imported by himself, while there was apparent good faith in his suggestion that I should make over the record personally. Moreover, I was inclined to attach great weight to Mr. Roy's advice, and he said that my taking Sir Francis Maclean the records, however informally he had expressed his wish for them, would please the Chief Justice, and get him on my side.

I accordingly returned to my hotel, and thence proceded with the records to Sir Francis Maclean's house, 14 Loudon Street, accompanied by my Sheristadar, Sessions Clerk, and a peon. I arrived about 3.0 p.m., and sent in my card.

I may say that I was about the last person in the world to force myself upon Sir Francis Maclean if I had thought for a moment that he did not desire my presence. Except that I once went to see Mr. Justice Sale about the Chupra case in 1899, I have never called on any European High Court Judge, and, indeed, I don't think I have paid half a dozen calls on anyone in Calcutta since 1899. Moreover, Sir Francis Maclean is notorious for his pomposity, and it was well known to me that he had turned away from his house, on a former occasion, the Honourable Mr. B. L. Gupta, now a Judge of the High Court, who was, when so turned away, Legal Remembrancer, and the senior District Judge in Bengal, and had already acted as the Chief Justice's colleague on the High Court Bench. I went to Sir Francis Maclean's house under the impression that he was fully prepared for my coming, and was expecting and, indeed, desiring to see me. And for this reason I sent in my card in the first instance without any message.

The Chief Justice's servant took in the card, and returned with the answer "*Darwaza band*," literally "Door closed," a phrase corresponding to our English "Not at home," only that unlike the latter phrase it does not suggest that the recipient of the call is out. I thought there must be some mistake; that Sir Francis Maclean might be "out" to ordinary visitors, but that he would, at least, be "at home" to me, if he knew who I was, and what I had come about. I, therefore, asked for my card back, intending to write on it. I may say it was the only card I had with me on which my service and address were given.

The servant went upstairs, but after a good time returned and told me I could not have my card back. He added that the Sahib (his master) had guests at tiffin (luncheon).

This only made me the more convinced that there was some mistake. I thought the servant had not given his master the card, fearing the master's anger at being disturbed, and did not want the fact to come out. I searched and found another card on which my name only was printed, and wrote on the back of it "I understand from Mr. Chapman that you want record. When can you see me?" I told the servant to give that card to his master and bring an answer.

The man went upstairs and reappeared. There was a very long delay. I grew impatient and told the man I was not going to wait there all day. There were more disappearances and reappearances. At length it was announced that the Sahib was writing an answer. Finally, I was handed a letter in Sir Francis Maclean's handwriting;

> The Chief Justice of Bengal is unable to see Mr. Pennell, and desires that any communication he may wish to make should be made through the Registrar of this Court.

The explanation of these occurrences which I suggest to His Lordship is the same as I submitted in my memorial of the 21st March, "That although Sir Francis Maclean wanted to get hold of the record surreptitiously, he did not want his getting hold of it surreptitiously to be known." If Mr. Chapman conveyed to him my message, he must have been aware that at least one responsible person besides myself would know of his getting the record—the chaprasi would have told him that there were two native gentlemen with me—and he could not have ascertained without humiliating enquiries who

they were; for all he knew, Mr. P. L. Roy might have been sitting in my closed carriage outside his gate; lastly, there were his own guests. This was very different from my making over the record to a private go-between without having a scrap of paper to show for it!

From Sir Francis Maclean's house I drove straight to Mr. P. L. Roy's, which is close to it. I found closeted with Mr. Roy, Babu Moti Lal Ghose, the editor of the "Amrita Bazar Patrika." I told them both what had happened.

From Mr. P. L. Roy's I returned to my hotel, where I found awaiting me a letter from Mr. Chapman (Enclosure E.). This letter shows, I submit, that Mr. Chapman was aware of the orders which Government were about to issue, and as he had said nothing of the matter when he was at my hotel, he was presumably ignorant of their resolve then. I submit that this makes it probable that the resolution itself was taken between his visit to my hotel and the time of my return there—between, say, 1.0 and 4.30 p.m.—and that it was taken in consequence of his failure. I would further submit that it is not an altogether improbable supposition that it was taken at the Chief Justice's house. Sir Francis Maclean is not, I would submit, likely to have forgotten who were his guests that day; and it is in his Lordship's power to question him upon the subject.

I would further point out, in justice to myself, that it is not I but Mr. Chapman who mixes up private and official matters. Who in the world, I submit, to His Lordship, *would* trouble about an invitation to dinner in the case put by Mr. Chapman?

The reply I sent that gentleman was that my sister and I did not wish to compromise him, and that we should like him to say if he would prefer we did not dine with him.

Mr. Chapman replied by renewing his invitation (Enclosure E 1.), and we accordingly dined with him.

Just before we started to dine with him I got the letter, which is the Bengal Government's Enclosure No. 33, conveying the Lieutenant-Governor's order "That you leave Calcutta at once and return to your station, Noakhali"; and requesting "That you will be so good as to report the exact day and time at which you leave Calcutta and arrive at Noakhali." As pointed out by me in paragraph 10 of my second memorial, to comply with this order would have left me no option but to take away the record with me, while from the Chief Justice's letter which Mr. Chapman had produced it was clear that he wanted it at once. I determined, therefore, to apply by official letter to Mr. Sheepshanks, who was then Registrar, as directed by the Chief Justice, and to support the letter if possible by a statement from Mr. Chapman, who, I thought, had got me into trouble, to show that I was not really to blame, and had not intended any offence to the Chief Justice.

I did not care to discuss the subject at the dinner table, but arranged with Mr Chapman to come to his house and see him the first thing next morning (the 4th March). Accordingly that morning I went to his house. I was just in time to prevent his driving away, so apparently he was not very anxious to keep his engagement. I told him what had happened at the Chief Justice's house, and said it looked very much as though the Chief Justice meant to disown him. I pointed out that he had got me into great difficulty, and asked him to give me a statement in writing of what had taken place between us on the preceding morning, or so much of it as he cared to admit. He asked me if I meant to use the statement. I said certainly; that was what I wanted it for. He suggested that he could make a note for himself, so that he could refresh his memory if necessary. I said that would not serve my purpose. Finally, Mr. Chapman declined to give me any statement in writing; he did not think, he said, that he was *called upon to* give me any such statement.

I may say that Mr. Chapman had told me the night before that he did not know where he was to be posted at the end of his month's leave. As an

ex-Registrar, he might naturally expect a good station, but if he got into the bad books of Government, he would probably be sent to a bad one, say, to Noakhali, which, *pace* the Bengal Government (vide their paragraph 16), is in many senses a very undesirable station. And Mr. Chapman would certainly have got himself into the bad books of Government by saying a word more or sooner about the events of the 3rd March than he could help.

The Bengal Government, in forwarding the memorial which contains my allegations as to the events of the 3rd March, states that "The circumstances are not within the cognizance of this Government." But Mr. Chapman was, and is, their own subordinate; at the time their letter was written he was living in Calcutta, where he was employed as Additional Judge of Alipur. They could easily have examined him; they *would* have examined him if they thought there was any chance of his contradicting my statements. His Lordship can examine him or compel his examination now. I by no means wish my statements, either on this or on any other point, to be accepted without investigation; but I submit that it is not an unreasonable request that if those statements are not admitted, I should be afforded reasonable facilities for proving them.

I informed Mr. P. L. Roy of Mr. Chapman's refusal, and decided to file in support of my letter to the Registrar affidavits by my sister as to Mr. Chapman's visit, and by my clerks as to the occurrences at the Chief Justice's. I got these affidavits drafted, and went with my sister and the two clerks to the High Court between 11.0 and 12.0 a.m. The events which followed are set forth in sufficient detail in paragraph 10 of my memorial of the 29th April, the statements in which neither the Bengal Government nor the Government of India have ventured to traverse. From the charge based upon those events I have already defended myself. I may add that my sister's affidavit was sworn at Alipur, but that Mr. Pargiter, the District Judge there, refused to allow the affidavits of the clerks to be sworn, on the ground that they reflected on the Chief Justice! These affidavits, in the clerks' own hand, are now in my possession, and copies of them are enclosed (Enclosures F. and G.). I would respectfully ask His Lordship to read them for himself, and form his own opinion as to whether there was any justification for Mr. Pargiter's refusal. If a plain and unvarnished statement of the Chief Justice's acts reflects upon the Chief Justice, I submit that it is the Chief Justice's fault and not mine; apparently Mr. Pargiter thinks the Chief Justice may do these things, but that no one is to be allowed to say so.

His Lordship will now, I submit, be able to comprehend the Chief Justice's critical position. In endeavouring to cover up the traces of one blunder he had made another; several people already knew the facts, and I was rushing about Calcutta to file affidavits divulging them. Still, if the record could be got out of my hands, and I, myself, bundled off to Noakhali, there was yet a possibility of escape, for Mr. P. L. Roy is a timorous person, whose interest it was to keep in with the Chief Justice, and the latter was not of course aware that Babu Moti Lal Ghose was also acquainted with his secret. So—apparently after the refusal of the affidavits by the Deputy Registrar—the Criminal Bench were moved to demand the record forthwith, the Sessions Statement was hunted up, a letter issued with such haste that it was neither correctly copied or sealed, and Registrar and ex-Registrar despatched with it hot-foot.

Instead, however, of bringing the record, they brought back to the Criminal Bench and the Chief Justice the unwelcome information that I was off to file affidavits at Alipur. Things were getting worse and worse. So the Chief Justice hastily convened the Judges, and got a majority of them to recommend my suspension, which was carried out forthwith. He could not afford to give me a hearing, for then the very reason for suspending me would have been removed by my divulging his own conduct. He, therefore, "applied his majority" to the question, and so closed the argument.

From the point of view of the executive authorities my suspension was a fatal step, for it at once showed the High Court's hand. But from Sir Francis-

Maclean's point of view it was a necessity. And Sir John Woodburn and Lord Curzon dared not go against his wishes, seeing that they looked to him to help them out later on in the main case. And so I was suspended—*and* peremptorily ordered, without reason given, and, indeed, without any reason which could be given, to return to Noakhali *at once*.

The Chief Justice, I imagine, thought that I would be cowed by the order of suspension, and would comply with the order of return. The only result of the first order, however, upon my mind was to deprive me of any reason for obeying the second. If Government will not employ me it can be no concern of theirs whether I am in one place or another—by suspending me they turned a pawn into a knight. At all events, the morning of the 5th March found me still in Calcutta, while the Chief Justice's position was not improved by the publication of the affidavits in the "Amrita Bazar Patrika" of that date.

It was my intention to swear an affidavit of my own, setting forth all the circumstances, and to make an official application supported by this and the other affidavits, to the Registrar, that I might obtain the High Court's orders as to what I should do with the record. Being a private person, I no longer had any concern with this latter, but it was on my hands, and I wanted to utilize the opportunity which its delivery would afford me of explaining my position. On the 5th March, however, all the Courts were closed, so I could do nothing either in the way of swearing affidavits or of making over the record.

Early on the morning of the 6th March I went to Mr. P. L. Roy's to get him to draft my affidavit for me. The draft was nearly finished when a gentleman came and called away Mr. Roy for a moment. Mr. Roy returned and told me that the Judges were going to meet as soon as the Court sat, and resolve to arrest me on a charge of contempt in not making over the record. He urged me to improve my position by making it over before they could do anything. He gave me breakfast, and I went to the hotel, picked up my clerks and the record, and proceeded to the Registrar's room at the High Court, which I reached about 10.35 a.m. I at once began making over the record—as it was. Owing to its state it was not till past twelve o'clock that Mr. Sheepshanks could give me any receipt at all, and he was then only able to give me a provisional receipt, which contained a promise that the usual receipt would follow.

The Judges, to get to the room where they hold general meetings, have to pass through the Registrar's room. I had not been long there when they began to assemble—first four going in together, then others coming in one or two at a time. Sir Francis Maclean was one of the last. Not long afterwards the Judges began to disperse, and the contrast in Sir Francis Maclean's demeanour while going in and coming out left no doubt that things had not gone as he wished, and that even his majority had declined to arrest for failing to make over a record a person who was actually making it over in the next room. Even the mendacious press communiqué concerning my suspension, which Government, to pave the way for their contemplated coup d'état, had sent to the leading English (but to none of the native) papers on the night of the 5th, failed of its full effect, for the "Indian Daily News," of the 6th, as already stated, only published it as the "official version" of the facts, and my own side of the case was published in the "Statesman" of the 7th.

If Sir Francis Maclean could have got the High Court to take judicial action against me, anything which I might have said would have been discredited, nor would there have been any necessity for the Local Government to frame charges against me or to give me a hearing. As it was, the plot concerted between him and Sir John Woodburn had failed; and day by day it dawned more clearly upon an astonished public that the High Court had departed from the elementary principles of natural justice by condemning a man unheard, while the key to the whole was supplied on the 11th March by the publication of the Chief Justice's telegram. The Local Government could frame no charge against me because they knew that they had no charge against me which would stand; that the charge on which I was suspended is

sustainable it was left to the Government of India to discover. The Government of Bengal and the Government of India found themselves derided by the native and denounced by the English press; every day made their position worse; and it was impossible that the facts could permanently be kept from His Lordship's knowledge.

The proper course for the Executive to have taken, I would submit to His Lordship, when they saw, as they must have seen at a very early stage, that my suspension was indefensible, was to reinstate me, but this would have been an admission that they had done wrong, and, as I submit the Chupra case has shown, European officials in India are very unwilling to admit they have done wrong; they are far more likely to attempt to cover up the first wrong by additional wrongs.

And I submit for His Lordship's consideration that it is this which has led them to draw up against me these general charges, covering my whole life—to discover after 16 years that I have all along been incompetent, devoid of ability, a monster of malevolence and malice, deluded by a morbid and malignant vanity, with a mind diseased by suspicion, and an uncontrolled and vindictive temper. I submit that if there is one thing more than another apparent on the face of these proceedings, it is not that *I* am unable to keep *my* temper, but that my accusers and judges have lost theirs. And I would humbly represent that it is rather hard that because they have lost their temper I should be turned out of the service without a penny.

I now proceed to deal with these additional charges which the two Governments have had to bring forward as the only alternative to admitting themselves in the wrong—as the only means of avoiding the "logical consequences" of removing my suspension.

And first, I will ask His Lordship altogether to exclude from his consideration the charges relating to my doings in Burma, the charges that I thrashed a man in 1893, and made a Chief Commissioner very angry in 1894. I will do this on two grounds:—the first, that these matters happened many years ago; the second, that they have not the remotest connection with the Noakhali case. I would submit to His Lordship that the charge of irrelevance, which is repeatedly brought against me in connection with that case, comes with as bad a grace from my accusers as that of uncontrolled and vindictive temper.

If His Lordship is disposed to consider these matters at all, I would submit with regard to the first, that my conduct was by no means so exceptional as the two Governments would represent it to be. Both in India and Burma, more especially in Burma, there are many highly-placed officials whom they know to have done much worse things. I do not wish for obvious reasons to mention names, but will give such particulars of two cases as will serve equally well. In a case in Bengal a civilian, wishing to punish a number of men, but knowing that they had committed no offence, and were certain if convicted to get off on appeal (the Appellate Court having reversed a previous similar conviction of his) tried them summarily, notwithstanding their protests, and flogged more than forty of them then and there. The late Chief Justice, Sir Comer Petheram, observed judicially that this officer had done as much as any one in his position could to bring the administration of justice into disrepute; but neither the facts nor the observation have prevented his employment for six years at Simla, where he was till lately Deputy Secretary to the Government of India in the Home Department, the very person to whom the drafting of letters like the Government of India's No. 54, of 1901, would fall! In another case, in Burma (Sir Charles Crosthwaite, now of His Lordship's Council, will remember it), it was brought to the notice of Government in 1890 that an officer who had already been Secretary to Government had two years before kicked to death in open Court a man appearing as a witness before him. I myself, being in the Secretariat, noted on the case, and recommended that as there was no doubt Mr. . . . did not mean to kill the man, as he had compensated the man's widow, and as the matter was two years old, there was no need to revive it, and this view was accepted by

the Burma Government, and the Government of India. The officer in question was shortly after re-employed as Secretary, and is now, I believe, Commissioner of a Division. The only difference between my case and the cases of these two gentlemen is, I submit, that they did worse things than anything I have ever done, and that whereas I was very severely punished, they received either a nominal punishment or no punishment at all. Further, as the severity of my punishment is actually put forward by way of emphasizing the heinousness of my offence, I may state that if His Lordship desires I am in a position to prove that the Burma Government, with whom I was then a *persona grata*, never meant to take any notice of the matter at all, but were forced to do so by an enquiry from the Government of India, that the order removing me from the Settlement Department "As soon as his transfer can, with due regard to the public interest, be arranged" was not intended to be carried out, and that I was advised to take a year's leave on medical certificate, and thereby render the whole punishment nugatory. If His Lordship desire further information on these points without referring to me, he can readily obtain it by reference to Colonel H. R. Spearman, now retired, who was Commissioner of Tenasserim at the time, and was till lately one of His Lordship's constituents at Ealing.

With regard to the second matter, which led to my suspension in 1894, I would solicit that if any reference be made by His Lordship, it be made not to the selected extracts of the Bengal Government's letter, but to the fuller papers enclosed by the Government of India. It will be seen from Sir Alexander Mackenzie's "note" that to my "warped imagination" the Burma Secretariat were banded together to "burke" the "Munro case." The Munro case, I may inform His Lordship, was a scandal of the same type as the Chupra and Noakhali cases, and, I being got out of the way, and Burma not being Bengal, was very successfully burked. It was the early developments of this case which led to the issue of Sir A. Mackenzie's well-known Circular on "Burmese Mistresses." Now, Sir A. Mackenzie's note left no doubt upon my "warped imagination" that the resolution to "burke" the Munro case was not confined to his Secretariat but extended to himself. The only way in which I could defeat it (and I may say that criminal complaints, made to me as District Magistrate, had been illegally taken out of my hands by the executive authorities and were being held over till I was out of the Province—I had been finding out a great deal too much) was by the intervention of the Government of India. I could not get to the Government of India myself, but if Sir A. Mackenzie suspended me, he would be forced to bring the matter to their notice, and they would be able to "know of" it if they liked.

Burma is a backwater of the Indian Empire, and the Government of India of course preferred *not* to know of "The scandals connected with the Munro case." But I would submit that I was much younger then than I am now, and that it is not incredible that I should have believed at that time that there was a chance they would. I was reproaching myself for having parted with the records, which the executive authorities got from me by saying that the Director of Land Records (Mr. Munro's immediate superior) would inquire departmentally first. The Director did begin his enquiry, but as he reported—demi-officially, be it understood—that things were even worse than I made them out to be, nothing more was done, and it became evident to me as months passed by that nothing more would be done. I felt that I had done wrong in making over the records to the revenue authorities at all. It was under these circumstances that I acted as I did. It has never been alleged that I had any malevolence against Mr. Munro whom I have never even seen, or any personal ill-will to Messrs. Macdonald and Carstairs (both of whom, I may say, were men whose promotion had been permanently stopped). It is the less probable that I should have opposed Government simply for the sake of opposing Government, as at the time I was expecting shortly to be married.

In his note Sir Alexander Mackenzie speaks of false and malicious insinuations made by me concerning Mr. Thirkell White. I neither have now nor ever had any ill-will towards Mr. White personally, we have always been on the best of terms. That Mr. White did not think me actuated by malice

will appear from the terms of his letter of the 23rd December, 1894 (Enclosure H.), and of a subsequent letter of 29th January, 1896 (Enclosure J.).

The Government of India says:—

"On the 1st January, 1895, the Chief Commissioner reported that Mr. Pennell had complied with his order and had asked indulgence for his conduct. This submission had, however, been very tardily made, and only after Sir Alexander Mackenzie had refused to receive a letter couched in very objectionable language, which Mr. Pennell had in the first instance forwarded to him."

The terms of the Chief Commissioner's report are not given nor is it possible, therefore, for me to know whether the phrase "very objectionable language" is Sir Alexander Mackenzie's or the Government of India's. But I wish His Lordship to form his own opinion on the matter, and not to merely accept without enquiry the opinion either of Sir Alexander Mackenzie or of the Government of India. I, therefore, enclose copies of my first letter, of the Chief Commissioner's letter returning it, and of the letter accepted (Enclosures K., L., and M.). I was only suspended on the 3rd of December, and all correspondence with Rangoon had to pass through the Commissioner at Bassein. It will be seen that so far from being tardy, I actually sent off the second letter before receiving back the first, and His Lordship can judge for himself whether "very objectionable" is the term to apply to the sixth paragraph of the first letter, to which alone exception is taken. The subordinate Governments are, I would submit, far too ready to construe a protest of one's innocence as an aggravation of guilt, without regard to the question whether the person who makes it is really innocent or guilty. I submit that it is quite possible to make incorrect statements against a brother officer, as I did with regard to Mr. White, without making them either falsely or maliciously, and that this was the view taken by Mr. White himself.

The accusations contained in paragraph 3 of the Burma Government's letter, and treated by the Government of India as being thereby proved, were made behind my back, and this is the first I have heard of them. It seems to me that they had little relevance to the matter for which I was suspended, and have even less relevance to the Noakhali case. It is somewhat difficult for me to defend myself against such charges seven years afterwards, especially when I never knew before that such charges had been brought—still more so when the charges are held, like the High Court's charge, to prove themselves. As, however, not only did Sir Alexander Mackenzie in 1894 consider these matters relevant to the Munro case, but the Government of India in 1901 has considered them relevant to the Noakhali case, it may be as well that I should comment on them as briefly as possible.

And first, it is said that the Financial Commissioner had repeatedly complained of me. The complaints are not given, but I will submit facts which will, I should think, considerably discount any complaints which Mr. Smeaton (the Financial Commissioner) may have made against me.

Between the time of my beating the Thugyi and the time when orders were passed upon it, I had mortally offended Mr. Smeaton by the publication of my Settlement Report (the Amherst Settlement Report of 1891-2), in which his system of land settlement was criticised. I had not only condemned it myself, but had succeeded in convincing both the Commissioner of the Division and the Director of Land Records of the truth of my criticisms. Mr. Smeaton avowed to me that he would never have let my report be published if he had known of it; he denounced me as an idle and useless officer; and he prevented the Burma Government from saying as they had meant to say if any one had ever asked them, that my transfer from the Settlement Department could not, with due regard to the public interest, be arranged; the result of which was that instead of losing Rs. 200, I lost Rs. 650 a month.

The acting Chief Commissioner of Burma when these events occurred was Sir Frederick (then Mr.) Fryer. Sir A. Mackenzie was by no means satisfied either with the justice of my punishment or with the condemnation of my Settlement work. One of the first things he did on returning to Burma was to put me back in my former place in the Commission, and this was soon

followed by his taking the very unusual step of publishing a supplementary Resolution—a year after the event—on my Amherst Settlement Report. Where Mr. Smeaton had blamed he praised. "Chapter V. of Mr. Pennell's Report," he observed, "may be altogether out of place, but the Chief Commissioner trusts that proper steps have been taken to prevent the recurrence of the evils that he has brought to light. Sir Alexander Mackenzie thinks that it may be very well the case that the Directions to Settlement Officers, Lower Burma, would be the better for revision and expansion. The matter is commended to the earnest attention of the Financial Commissioner."

When it is borne in mind that Mr. Smeaton, the Financial Commissioner, had himself in his younger days drawn up these Directions, it will be perceived that these remarks in a published resolution were not likely to endear me to him. He was still further exacerbated by an incident which occurred when he visited the district of which I had charge. By way, I presume, of showing his contempt for me, he stabled his ponies in my Court house, notwithstanding the protests of the police in charge. I had then removed to the pound, and the Commissioner, who was in Maubin at the time, declined to order me to take them out again.

As to the Commissioner, it seems that he wrote that, though he liked cial Commissioner should have repeatedly complained of me behind my back; but if it is desired to use these complaints against me I submit that I may fairly ask to be informed what the charges were, and to be given an opportunity of meeting them.

As to the Commissioner, it seems that he wrote that though he liked me much socially, officially I was inclined to be petulant. It is rather hard that remarks like this should be brought up against me years after. That the Chief Commissioner's opinion about my "attitude towards my Commissioner" had not, when the events were recent, been so adverse as it became afterwards, when he had to justify his own note, will appear from Sir Alexander Mackenzie's letter of 23rd July, 1894 (Enclosure N.). That letter, I may say, is marked private; but I have obtained Sir A. Mackenzie's permission to make use of it. And I may say that though he lost his temper with me over the Munro case, I do not believe that he would now, if referred to, endorse the description given of me in the Government of India's letter.

As to the Judicial Commissioner's finding fault with me (the matter referred to is his letter printed as No. 4 of the "Burma papers"), it may surprise His Lordship to be told that the letter complained of was submitted by me for approval to Sir Alexander Mackenzie himself, who had specially asked, owing to the delicate nature of the business, that this should be done. It was approved by him, and was sent to the Judicial Commissioner, not by me, but by Sir Alexander Mackenzie. It is, I submit, rather unjust that Sir Alexander Mackenzie should afterwards blame me for it (he calls it in his note "the long-winded impertinence to the Judicial Commissioner about the Kromer case"), still more so that he should base upon it a complaint against me behind my back. Perhaps he did not foresee that his *ex parte* complaint would be used against me so many years afterwards. I would only point out that it was not till I had offended him that a letter which he had himself approved and transmitted became a long-winded impertinence.

Sir John Woodburn does not say how he got the letters which are Nos. 2, 3, and 4 of his "Burma papers"; I can hardly believe that Sir Alexander Mackenzie would have sent these papers after me to Bengal. I submit that they must have been obtained recently by Sir John Woodburn. It is within my knowledge that the Burma Government, when a barrister named Moylan, of whom His Lordship may have heard, was giving them trouble in his capacity of "Times" correspondent, wrote to the authorities in the West Indies, where Mr. Moylan had practised years before, for official papers which could be used to prevent his practising in Rangoon; so I cannot call Sir John Woodburn's conduct unprecedented, but I would submit to His Lordship that it is not what might be expected of a Lieutenant-Governor, especially of one who has professed so much consideration for me (vide paragraph 16 of his letter).

I have thought it necessary to deal at some length with the Burma charges, owing to the prominence given to them in the two letters in which my dismissal is recommended; but I submit that it should be sufficient for me to point out to His Lordship, as I have pointed out in my judgment in the Noakhali case, "That whatever the executive authorities may now say as to my misdeeds in Burma, what they really object to is not my having done wrong then, but my doing right now" (page 153 of the High Court's Paper-book [Appendix, page 255]). As Burke said, upon a similar occasion, "Add but the crime of servility (the foedum crimen servitutis) to every other crime, and the whole mass is immediately transmuted into virtue, and becomes the just subject of reward and honour . . . . I must conclude that Mr. Wilkes is the object of persecution, not on account of what he has done in common with others, who are the objects of reward, but for that in which he differs from many of them; that he is pursued for the spirited dispositions which are blended with his vices; for his unconquerable firmness; for his resolute indefatigable strenuous resistance against oppression."

I would further point out that Sir John Woodburn has not ventured to deny that last October he held these Burma matters over me *in terrorem*; that I wrote my judgment with them hanging over my head, and in the full consciousness that they would be brought up against me. And I can hardly believe that Lord George Hamilton will think any the worse of me for refusing to submit to blackmail.

Before leaving these Burma incidents I must refer to the reasoning by which it is sought to justify their introduction. The Lieutenant-Governor professes to allude to them merely to show that it is impossible to employ me in the executive branch of the service, and insinuates that they caused my removal to the Judicial Branch. And similarly the Government of India which enlarges on them at greater length, thinks it necessary to preface the mention of them with certain sonorous generalisations. "It is conceivable," they say, "that an individual, though disqualified by aptitude or temper from the becoming discharge of judicial functions, might yet be the possessor of faculties which would qualify him for an executive career. It is even conceivable that error of egotism or judgment, which would discredit the Bench, might be condoned in consideration of exceptional abilities or service in other spheres of employment. In common with the Local Government, we have made a careful examination of Mr. Pennell's previous record of service. We desire now to acquaint Your Lordship with the result." In other words, these matters are brought up not because they have any relevance to the Noakhali case, but to show that I am not fit to be an executive officer; it is these matters, says the Lieutenant-Governor, which caused my "removal" from the executive branch.

In view of these arguments, and of this statement, His Lordship may be surprised to hear that I was actually gazetted to act as Collector of Rungpore in October, 1895. The order, no doubt, was cancelled, but only because the officer who was to relieve me as Judge was not relieved himself. The two demi-official letters from Mr. Cotton, then Chief Secretary to the Government of Bengal, dated 15th October and 16th November respectively, of which I annex copies (Enclosures O. and P.), will show His Lordship how much truth there is in the statement that I was "removed from the executive branch" on account of misconduct in Burma. In the latter of these letters Mr. Cotton explains, and expresses regret, for the cancelment of the order posting me to executive employment, and says that my having officiated as a Judge by no means pledges me to join the Judicial service. And though I have no writing to prove it, I may add—and possibly Mr. Cotton may remember—that it was *at my own request* that I was first appointed to act as Judge instead of Collector. I wanted to see what the work was like—and that Mr. Cotton opposed my becoming a Judge on the ground, *inter alia*, of my comparative youth—no one, he said should be a Judge before 35, while I was then only 29.

I asked to be appointed as Collector in October, not because I thought it a superior post to that of Judge—in fact, I should have lost a little pay—

but because no man, at all events no young man in India, likes to be a Judge in the cold weather.

If my conduct in Burma had disqualified me for executive employ, I submit it would have been an even greater disqualification for the appointment of a Sessions Judge, with its far greater responsibility. But apart altogether from any *a priori* reasoning of this kind I have shown that the Government of Bengal in October, 1895, with a full knowledge of the facts did not consider me unfit for executive employ. And if these incidents of 1893 and 1894 did not disqualify me for such employ in 1895, when they were near, still less, I submit, can they be held to be a sufficient disqualification in 1901, many years after.

I submit that these incidents have been introduced, not to prove my unfitness for executive employ, but to prejudice His Lordship against me. And I may be allowed to express my confidence that if His Lordship permits himself to be prejudiced by them at all, it will be not against me, but against those who without any justification have raked up against me these indiscretions of my youth.

The Governments of Bengal and India have briefly reviewed the whole of my service before my return to Bengal. I think it probable that this was done only to excuse the introduction of the Burma charges; but as there are also general charges of "incompetence" and "want of ability," and as it is stated that I was "returned to Bengal" from Burma, and that there are "no extenuating circumstances in my career," it may be as well that I should say a few words on this also—even though I can hardly avoid the Scylla of "incompetence" without falling into the Charybdis of "vanity" with which I am also charged.

And first, I would remark that there is such a thing as a confidential character book, and that, so far as my experience goes, the reports entered in this character book by the Head of the Province are invariably quoted in cases of this kind. Why are they omitted in this case? Is it out of any consideration for me that His Lordship is not allowed to know what was recorded concerning me, when they were leaving those Provinces, by Sir Steuart Bayley, Sir Charles Eliott, and Sir Alexander Mackenzie in Bengal—by Sir Charles Crosthwaite in Burma. I submit that these reports have been kept back because they will not support the case put forward by the Government of India.

The two Governments have reported that I was employed as an Assistant Magistrate in Bengal from November, 1886, to March, 1889. They omit to mention that I passed my departmental examinations, and so qualified myself for promotion six months before any one who came out with me, and that I was honourably mentioned in the annual Reports of the Board of Revenue for 1887-88 and 1888-89, I being the *only* Covenanted Deputy Collector of my standing commended in *both* of them.

They say that I was employed from March, 1889, to the end of November, 1889, in the Account Department, which I left at my own request: I entered the Accounts Department at the invitation of Mr. Sinkinson, the Financial Secretary, who wrote me that the Finance Department "offers greater opportunities than any other public Department." (His letter is Enclosure Q.) I do not know if my requesting to leave the Department is considered discreditable. I would only point out that few young men of 24 care to remain all their lives in an Account Office, and that it has lately been decided by the Financial Department that it is not even to the public interest that they should remain in it more than a certain time. That, however, I was not considered a failure will, I think, be apparent from two facts—

1. That when I tendered my resignation Mr. Gay, the Comptroller-General, came over and tried to induce me to withdraw it.

2. That so late as December, 1898, Mr. Cox, the present Comptroller-General, asked me if I would accept an officiating appointment as Accountant-

General of the North-Western Provinces (vide his letter of 14th December, 1898, Enclosure R.).

It is said that I was transferred to Burma. Now, as Burma is an unpopular Province, the suggestion may be that I was sent there as a punishment. To show that this is not so, I beg to subjoin a letter (Enclosure S.) from Mr. Buckland, then Revenue Secretary to the Bengal Government—the very officer who, by the irony of fate, has been ordered to sign the Bengal Government's letter recommending my dismissal. It will be seen from this letter that he was informed by Sir John Edgar, the then Chief Secretary, that I "had been specially selected to go to Burma, on a personal application, twice made by the Viceroy himself to the Lieutenant-Governor, to send two of the best of the junior men in Bengal."

The Government of India state that I served in Burma in various capacities, all of which, *save one*, they enumerate. It is strange that their "careful examination" has not disclosed the fact that I was for eighteen months Under-Secretary to the Chief Commissioner. The first Chief Commissioner under whom I served as such was Sir Charles Crosthwaite, now a Member of His Lordship's Council. He will be able to tell His Lordship whether or not I gave satisfaction.

For another eighteen months I was employed as Settlement Officer. Some time back I destroyed the copy which I kept of the Secretariat notes concerning my appointment as such. I remember, however, that the Revenue Secretary and the Director of Land Records concurred that they "could have no better man than Pennell." The notes will be on record in the Rangoon Secretariat. I may say that I left the Secretariat at my own request, not because I was not getting on there, but because my health would not stand the long hours of office work. The Chief Secretary, the late Sir Edward Symes, urged me to stay, and said that if I did I would be made a Secretary.

With regard to my Settlement work, I have already said that it was virulently condemned—after he had seen Chapter V. of my report—by the Financial Commissioner, but that Sir Alexander Mackenzie did not share his views, and issued a counter Resolution. I will here add that after personally inspecting my work in the field and reading the first four chapters of my Report, but before seeing the fifth chapter, in which I criticised his methods, Mr. Smeaton had expressed himself highly pleased with me, and that just before the Report came out I was informed by the Revenue Secretary (in his No. 518/L.-2, dated the 27th April, 1893, Enclosure T.) that the Chief Commissioner intended to appoint me to act as Director of Land Records—a step not likely to be taken without the Financial Commissioner's approval. The Director of Land Records, I may say, was then the head of the Settlement Department, and the Financial Commissioner's principal subordinate. I may also say that a Settlement Manual which I compiled is the basis of that now in use throughout Burma. My Amherst Settlement Report is, I believe, in the India Office. I annex a copy of Sir A. Mackenzie's Resolution (Enclosure U.), for the tattered condition of which I apologize. I did not know I should have to use it in this way. That Sir Alexander Mackenzie thought I had not been fairly treated may, I submit, be inferred from the fact that he directed a copy should be sent me. The letter forwarding it is annexed (Enclosure U.).

As Sir John Woodburn states that I was declared unfit for the charge of a District, I may be allowed to point out that this was a punishment for an isolated act, and that as I was subsequently placed in charge of the heaviest District in Burma (and that too though I had never before been a District Officer) it may be presumed that the authorities there did not consider my disqualification a permanent one. In a demi-official letter of 24th November, 1893 (Enclosure V.), Sir Edward Symes writes that "Courneuve," the Deputy Commissioner under whom I was serving, "speaks in the highest terms of the assistance he receives from you." On 25th December he wrote (Enclosure W.) urging me to stay in Burma, and said "the Chief Commissioner will, I know,

be sorry to lose your services in this Province." And on the 10th February, 1894, he wrote that "The Chief Commissioner proposes to transfer you next month to the charge of the Thongwa District, which as you no doubt know is considered one of the most important in Lower Burma." (Enclosure X.)

Sir Alexander Mackenzie, in the note enclosed by the Government of India, alludes to my being, after some months in Thongwa, in a state of nervous tension. He has omitted to mention that of the three Deputy Commissioners who had preceded me there—all experienced District Officers—two had broken down, and had to leave, and that shortly before his visit in July, 1894, I had completely collapsed from overwork, and had had to lie up for a week on medical certificate. That my administration of the District was not altogether a failure may, I submit, be inferred from the fact that when he was in his angriest mood Sir A. Mackenzie could find nothing worse to say of me than that my Reports were late; that while I was still under suspension he publicly complimented me on the efficiency of my police administration (a matter referred to in Mr. White's letter, Enclosure H.); that in the Revenue Report next year the Financial Commissioner although suppressing my name admitted that the capitation tax had been well collected in the District; last, but not least, in the fact that in the Munro case, although the higher officials escaped scot free, Mr. Munro himself and nearly the whole of the Land Records staff who had served under him were dismissed. As with the Police in Noakhali, I had succeeded in convincing even Government that the administration of one of their Departments in the district was not in a satisfactory state; but there, as here, I got but small thanks for the demonstration.

That I was not "returned to Bengal" against my own wishes will appear from Sir Alexander Mackenzie's letter (Enclosure N.), to which I replied that I wished to return. I may say that I was sent to Burma for five years, with option of remaining or returning at the end of that period. I chose to return. Three other officers, one from Bengal and two from Bombay, were sent to Burma at the same time, and on the same terms as myself. They all chose to return. I regret that the wording of the India Government's letter has rendered this paragraph necessary. It will be seen that the Burma Secretariat were unwilling to let me go at the end of 1893; that Sir Alexander Mackenzie asked me what I wanted, and that Sir Frederick Fryer would have been sorry to lose my services.

After my return to Bengal I was, no doubt, exclusively employed in a judicial capacity. But I have already pointed out that I was not "removed" to the Judicial Branch of the Service, and that Government was willing in 1895 to employ me as an executive officer. That I was not considered a failure as a Judge may, I submit, be gathered from the fact that in September, 1897, I was appointed to the charge of Mymensingh, the heaviest district from a judicial point of view in Bengal (or for that matter in India), with an area of 6,000 square miles, and a population closely approaching that of Scotland or Ireland. I would solicit a reference to Mr. Chief Secretary Bolton's letter of 18th September, 1897 (Enclosure V.). "A strong Judge," he writes, "is wanted there . . . You are likely to deal with the heavy work there more effectively than most of our Judges." This, I submit, is hardly consistent with "incompetence." I may add that in December, 1897, Sir Alexander Mackenzie informed me that the High Court had reported on me very favourably.

With regard to my work in Noakhali, where I was stationed from November, 1899, I beg to point out that the remarks contained in my letter of 26th December, 1900, to Mr. Chapman (Exhibit X 8 in the Noakhali case, page 101, Part II. of the Paper-book [Appendix, page 335]), have never been controverted. I repeat them here:—"I would solicit a reference to the returns for the September quarter, which will show that the work is well up to date. I may also add that with one trifling exception not a single order of mine has been reversed or modified by the High Court during the whole time I have been at Noakhali." (This was then true—as I shall point out later on, my judgment in the Noakhali case effected as complete and rapid a change in

the High Court's estimate of my judicial work as the publication of my Report did in Mr. Smeaton's opinion of me as a Revenue officer.)

If I do the work there is to be done, if none of my decisions are altered on appeal or revision, if the Bar and the public are satisfied with me, what more can Government want? Nor is it the fact that Noakhali is a light Judgeship; without a Subordinate Judge it is, as pointed out in my judgment (page 153 of the Paper-book [Appendix, page 255]), a very heavy one, and Government has now been compelled to send a subordinate Judge there. A reference to returns will easily prove that in 1900 I did more Civil work than the average Sub-Judge (who has nothing else but Civil work to do) and that I did all the criminal work and inspection work besides.

I submit that I have done good work as an Assistant Magistrate, as an Accounts Officer, as an Under Secretary, as a Settlement Officer, as a Deputy Commissioner, and as a Judge; and that the India Government's final observation that there is no extenuating circumstance in my career is incorrect and unfair.

I now come to the charges affecting my judicial career. The first of these is that I have "repeatedly abused my official position and powers." The only instance given, apart from the Noakhali case, where I have been *judicially held* to have made even a mistake is that of Empress *v.* Baroda Nath Bhattacharjya, a Sub-Inspector of Police, whom, in May 1898, I directed to be committed for trial. The High Court set aside that order in July, 1898.

Even assuming that the High Court were right and I was wrong, I submit that the fact that I made a mistake on a point of law can hardly be termed an abuse of my position and powers. Still less can it be said that *one* such mistake in six years constitutes a *repeated* abuse. Subordinate Judges are constantly being held by Appellate Courts to have erred; I believe that the High Court themselves have sometimes been set right by the Privy Council. The point in this case was whether the Deputy Magistrate had jurisdiction to acquit (of a minor offence) a man who was charged before him with a graver offence which the Magistrate was not himself competent to try, but only to commit to me for trial. I held that he had not jurisdiction, and that I had, and directed the man to be committed for trial. The High Court held that the Magistrate had jurisdiction, and that in consequence I had not, and set aside the order of commitment.

It was not, I submit, a grave fault for me to err in such a matter—the less so as it was easy to correct my error. And I submit that it would be specially dangerous to punish a Judge for making an error against Government. (In practice the cause of every Sub-Inspector of Police *is* the cause of Government.) No Judge can tell to a certainty what view an Appellate Court may take, while every Judge knows he is not likely to get into trouble personally by making a mistake on the Government side.

As, however, I am now sought to be prejudiced personally by the High Court's decision, I submit that I should be allowed to show that the High Court were wrong and I was right. I may premise that before passing my order I had discussed the point of law and shown the case to Mr. P. L. Roy, who, as I have said, has the largest criminal practice in Calcutta, and that he advised me to do as I actually did. By a curious coincidence, Mr. P. L. Roy was actually offered the Sub-Inspector's brief, which he refused on account of having discussed the matter with me.

Mr. P. L. Roy was in Court when the case came on for hearing, and he is my authority for saying that my explanation was not even read. He wrote me on 2nd July, 1898: "That case in which you had ordered a commitment came on for hearing yesterday; Hill appeared for the petitioner. No one appeared for the complainant, and the rule was made absolute in five minutes. O'Kinealy directed that your remarks about the District Magistrate, Deputy Magistrate, and the Local Government should be expunged. This is the way justice is done. The Policeman oppresses; the Courts sympathise not with the oppressed but with the oppressor." It will be seen that my side of

case was not heard at all—the complainant being unrepresented. It was natural under these circumstances that the High Court should accept the view put forward by the petitioner's Counsel, which was a short and easy way out of the case, rather than consider my "very long and elaborate proceeding"—or the equally long explanation which I submitted in answer to the rule. Even the statement of facts in the High Court's judgment is misleading. The reason why the complainant went to the District Magistrate before coming to me was that I had gone to Calcutta for the Christmas holidays—what he asked the District Magistrate to do was to stay the Deputy Magistrate's proceedings till he could apply to me—the Deputy Magistrate was hurrying on the case so as to finish it before I could interfere. Nor is it correct to say that I decided that the proper course would be for Government to appeal. The Local Government have not thought fit to give my judgment, so His Lordship cannot see for himself what I *did* decide. Unfortunately I kept no copy of my judgment myself, not thinking it would affect me personally.

I now turn to the point of law.

The charge against the Sub-Inspector was that he had wrongfully locked up a cultivator in his Police Station in order to extort money from him. Now, wrongful confinement by a private person is an offence under section 347 of the Indian Penal Code, and is triable by a Magistrate. But wrongful confinement by a Police Officer, acting as such, is a graver offence, punishable under section 220 of the Indian Penal Code, and triable exclusively by the Court of Session.

A Magistrate dealing with the first offence, as he can try, can acquit, in dealing with the second offence, he can only commit or discharge. There is an appeal to the Sessions Judge against an order of discharge; there is none against an order of acquittal *by a Court of competent jurisdiction.*

Further, under section 209 (1) of the Code of Criminal Procedure, a Magistrate enquiring into a charge of a Sessions Offence cannot reduce it to a minor offence, cannot convert the *inquiry* into a *trial*, unless and until he finds that there are not sufficient grounds for committing the accused person for trial.

Now, in this case there was no question that either the Policeman had committed no offence at all, or he had committed one exclusively triable by the Court of Sessions. What the Deputy Magistrate did, however, was, notwithstanding the repeated protests of the complainant, to charge, try, and acquit the accused of the minor offence, and so, as he thought, prevent all further proceedings.

I held that he had no jurisdiction to do this, and that as he had tried the accused without jurisdiction his proceedings were void. On the evidence recorded by him I directed that the accused be committed.

Under section 530 (p) of the Code of Criminal Procedure, if a Magistrate not being empowered by law in that behalf tries an offender, his proceedings are void. The Bombay High Court have held that in such a case it is not necessary that the order of acquittal passed by the Magistrate should be set aside by the High Court before further proceedings are taken—Emp. *v.* Husein Gaibu, I.L.R., 8 Bom. 307.

It may assist His Lordship if I point out that the High Court's ruling in this Mymensingh case practically amounts to this, that if a man is charged with murder, a Justice of the Peace can successfully stay all further proceedings by trying and acquitting him of simple assault.

This is the solitary instance, apart from the Noakhali case, in which I am said to have abused my powers as a Judge. In the other cases cited by them, the executive authorities complain, not of what I did, but of what I *said.*

As regards the charge of using bad language, they refer to this case, and to two appeals decided by me at Chupra—one of them the case which

the Government of India, thanks to me, are constrained to call " the notorious Chupra case."

I would solicit His Lordship's special attention to the fact that in *every* case cited by Government in which I am said to have even spoken roughly of any one, the persons on whose behalf Government are so concerned are their own executive officers or themselves; they have not given a single instance where even in their opinion I have " abused my official position and powers " to the detriment of any private individual.

Yet I submit that from the standpoint of the public it is private persons rather than officials who need to be protected against the abuse of official position and powers—and that the newspapers are full of cases where official position and powers are abused by Judicial officers or officers exercising judicial functions at the expense of private persons. Complaints are continually being made by private persons, and frequently with very good reason, of the way in which Magistrates and even Judges abuse their official position and powers. The officials against whom these complaints are most freely brought do not, however, so far as I or the public can judge, incur the displeasure of His Lordship's subordinate Governments, on the contrary many of them seem to be in particular favour. Yet when anything is even said by a Judge against an official these Governments exhibit the most extraordinary sensitiveness, and apparently consider the truth of the remarks an aggravation of their enormity.

With this sensitiveness should, I submit, be considered the extreme unwillingness of those Governments to admit the existence of any defects either in their system of administration or in the personnel they employ; still more to take any steps to eradicate those defects. Of this there can hardly be, I submit, a better example than " the notorious Chupra case," and its treatment by the Government of Bengal and by the Government of India.

I have observed in my judgment in the Noakhali case (page 98 of the High Court Paper-book, Part I. [Appendix, page 224]):—

> " It would be better if the higher officials of Government did not think, as they do think, that it is their policy and their duty (I know that with men in their position *utile* is apt to seem *honestum*) to screen their guilty subordinates and to reserve all their indignation for anyone who thinks it his duty to expose those subordinates' guilt. Their maxim would almost appear to be, ' It must needs be that offences come, but woe to that man by whom the offence cometh.' "

I submit that there could be no better index of the truth of these remarks than the fury—for I can find no other term—with which they have been received by the Governments concerned. As Lord Rosebery has recently observed, when the naked truth is told in the political world, it produces an amount of anguish, howling, and misery unspeakable, which is the real test of its veracity.

Sir John Woodburn states that my service in the Judicial Branch of the administration has exhibited only a development of certain characteristics which I first displayed in Burma. So far this is true that in Burma also I have suffered from my fatal gift of convincing other people—though in that case only my immediate superiors—that there were potentialities of improvement in the administrative machine. To the way in which I was punished for my Amherst Settlement Report I have already adverted. But I may be allowed to quote here the words of Sir Alexander Mackenzie's subsequent pronouncement:—

> " The Settlement Officer is, no doubt, sweeping in his denunciations, but it is a well ascertained fact that the revenue administration of Moulmein has in the past been atrociously bad, and that the local officers in past years were weak and incompetent. A general reform in every direction must be insisted upon. Chapter V. of Mr. Pennell's report may be altogether out of place, but the Chief Commissioner trusts that proper steps have been taken to prevent the recurrence of the evils he has brought to light.

Can any sane man contend, I would submit, that the Government of Bengal and the Government of India have taken proper steps to prevent the recurrence of the evils I brought to light in the Chupra case, or that they

would have taken any steps at all, or were likely to take any steps at all, but for the fierce light which I succeeded in focussing upon their proceedings?

The policy of His Lordship's subordinate Governments is, I submit, a policy of hush-up; and the gravamen of the indictment against me is that conduct like mine renders such a policy impossible. It is for His Lordship to say whether the policy of hush-up is to be abandoned or Judges like myself dismissed. For I admit there is no third alternative.

The two Governments refer to judicial censures of my language. The only instance they give before the Noakhali case was that of the Mymensingh Policeman in 1898, in which the Registrar was directed to expunge all portions of my judgment in regard to the conduct of Government and of the Magistrate and Deputy Magistrate. The Government of India style these remarks objectionable, but they have not quoted them, and apparently have not seen them. If His Lordship is inclined to attach any importance to the matter, I would solicit that the Judgment should be called for—it is in the Court at Mymensingh, and the expunged remarks are or were perfectly legible. I submit that these remarks are kept back because every one would see their oppositeness to the Chupra and Noakhali cases.

As I have before submitted, the case was heard *ex parte*, and the Judges who decided it did not take the trouble to understand it. If they had desired to lay down a rule for my conduct, it is to be presumed they would have given clearer expression to that rule. It is hardly to be supposed that they meant to lay down the rule, that a Judge should never say anything about the conduct of Government or of District or Deputy Magistrates, even though, as in that case, such conduct was the direct issue before him.

The two Governments refer, however, to certain "instructions" of the High Court given in connection with the Chupra case. (The Bengal Government, less well-advised than that of India, tacitly admit that the case of Sheonandan Singh and others would never have been heard of but for the Chupra case.) I think it a sufficient answer to this to point out that these remarks of the High Court were entirely extrajudicial, and that I was not only justified but bound, as a lawyer, to pay no attention whatever to them—or rather, no more respect to them than may be due to the private opinions of the Judges.

It might be very convenient if the executive Government *could* get Judges to sit in secret, bring pressure and solicitations to bear upon them, and get them to pronounce decisions affecting persons against whom Government had a grudge, without hearing what those persons had to say, or even informing them that any proceedings were being held. But such proceedings are not *legal*; for the Judges who hold them are not sitting *as a Court.* Publicity and hearing both sides, the very element of judicial procedure, are wanting.

The letters of His Lordship's subordinate Governments are calculated to lead His Lordship to believe that in sending me their letter, No. 1247, dated 20th March, 1900 (Enclosure No. 2), the Judges acted of their own accord, and that they were unanimous. I therefore extract the following from a letter of Mr. P. L. Roy's, dated the 6th March, 1900, which was the first intimation I had of these proceedings (Enclosure Z. is a copy of this letter). It will be seen that Mr. Roy derived his information from Mr. Justice Ghose, who is still a Puisne Judge of the Calcutta High Court. His Lordship can easily verify its truth by referring to the latter gentleman or to Mr. Justice Stanley, who has since been appointed Chief Justice of the High Court at Allahabad.

"It appears," says Mr. Roy, "that the Government of India sent a reference to the High Court against your now famous judgment in the Chupra case, with the object, it appears, of strengthening the hands of the Secretary of State against any possible attack in Parliament, or it might be to prejudice him against you, so that he may not of his own accord take some action against the Government and in your favour. The Judges were asked to pronounce an opinion upon your judgment—in particular with regard to the strictures on the officials; they had two stormy meetings on the subject, and the very

judges whom you despised on account of their want of stamina and lack of education in Europe stuck up for you, and all your brother civilians were bitterly opposed to you and were in favour of reporting against you, but the facts of the case were too strong for them. Old Chunder Madhub had got up the facts very well and met Macpherson and Prinsep upon every point. Finally, it was decided to report to Government that apart from the fact that the language of your judgment was intemperate they had no other fault to find with it. Prinsep and Macpherson actually argued that your procedure in examining those officials was irregular, and when Ghose pointed out that the Deputy Magistrate had refused to give an explanation, they still said the examination of those persons might have been avoided. The men who supported you were Ghose, Banerji, Amir Ali, Stanley, and Chief Justice. Sale came in late, and nobody could understand what he did say on the subject, but it appears he said something without joining in the voting. The Indian Government further asked the Court what action they would take against you, upon which a reply has been sent to the effect that they would communicate their views to you direct."

His Lordship will now see why in Lord Curzon's Chupra case Resolution the letters which passed between the Government of India and the High Court are not reproduced. The reason is that Lord Curzon tried to get the High Court to report to the Bengal Government against me, so that "action" might be taken thereon. The attempt proved unsuccessful, and so the utmost the executive authorities dared to do was to keep me in the worst station they could find, and refuse me leave.

Mr. Roy continues:—

"There was some other reference against you by the Bengal Government with reference to some remark about some Canoougoes as a class, one of whom had given evidence before you, and the High Court had to condemn the language of your remark."

This is an allusion to the case of Sheonandan Singh and others, which was raked up by the Bengal Government in the hope that it would prejudice the High Court with reference to the Chupra case. If I had been asked about the matter I would have pointed out that not only was the "document" referred to in the High Court's letter, and made by the Canoongoe, inadmissible on formal grounds, but that the fact stated therein—the fact of the complainant's possession—was false, that there was good reason to believe that it was false to the knowledge of the Canoongoe, and that the person benefited by it was a comparatively rich man, while the appellants, whom, with the help of the Police, he had tried, on the strength of the Canoongoe's report, to turn out of their land by force, were poor cultivators. The Settlement Department in Bengal are prone to rely, on account of its cheapness, on corrupt native agency, and I thought myself justified, in a case in which this reliance had resulted in a riot and in criminal proceedings, in drawing attention to its impolicy; I have been a Settlement Officer myself. In Burma we never even let these Canoongoes express an opinion in cases of disputed possession—we knew it would be just a case of who paid them most. His Lordship will observe that the Bengal Settlement Department and the Bengal Government are up in arms because it is hinted that the veracity of these men's reports may be open to suspicion, that it is not safe to regard them as gospel truth.

I would commend to His Lordship's attention some remarks contained in the same letter, by Mr. Roy himself, which show how these matters are regarded by an educated native gentleman with the best means of forming a correct opinion:—

"Dyspepsia is not the only disease for which this is a bad country. I think there is another disease for which this country is more unsuitable—I mean for those people who suffer from 'prickings of conscience.' The Government of India must know that you were absolutely right on the merits, but your judgment if accepted by them would mean an absolute condemnation of the system of Government which prevails in this country, therefore you must be sacrificed in some way or other. The Government of Bengal sends you to Noakhali on account of this case, and afterwards unblushingly declares that it was not due to that, but the exigencies of the service, only nobody has yet explained why you of all others should be sacrificed to these so-called 'exigencies.'"

I submit that the real grievance of the executive authorities with regard to my language is not that I write badly, but that I write too well; that what I write the public reads; that my judgments cannot be filed or pigeonholed; that they dare not ignore them, or the abuses which I expose. Let not His Lordship for a moment suppose that those abuses are exceptional, still less that my views with regard to them, and with regard to the system by which

they are perpetuated are peculiar to myself; that there are not plenty of other Judges intelligent enough to see, and honest enough to abhor them. The reasons why His Lordship has heard of me and has not heard of those other Judges are two: the first, that it has pleased God to give me the power of expression above my fellows, and that hence I can denounce these abuses *effectively;* the second, that I need little. There are few Judges who *could* expose His Lordship's subordiate Governments as I have done: fewer still, who would dare to do so if they could. It is no part of the policy of His Lordship's subordinate Governments that any dangerous ability should find its way from the Civil Service to the Bench, they are not anxious that the only practical check upon their action which the circumstances of India allow should be too effective; it is to their interest that Sessions Judges and High Court Judges should be, as much as possible, mediocrities; that if they must have Judges of some sort they should have Judges not capable of giving trouble. And these men, most of them, have wives and children; few of them have saved anything, fewer still have a profession to fall back upon. They *dare* not bring abuses to light; and, in the great majority of cases, would sacrifice themselves to no purpose if they attempted to.

The independence of the subordinate Judiciary in India, as I have pointed out in my judgment in the Noakhali case, is a sham. The forms of freedom are there, but nothing more.

Two years ago a memorial was submitted to His Lordship by ten of the most eminent authorities connected in the past with the administration of justice in India. The foremost place was given in this memorial to some words of Sir Richard Garth, a former Chief Justice of Bengal, written as far back as 1895:—

"The real truth is, as Mr. Ghose tells us, and as Sir Charles Eliott and some other high officials in India are honest enough openly to avow, that the Government of India approves this scandalous system and (whatever the Secretary of State may say to the contrary) would be very sorry to see it altered. In point of fact, if the Government had its will, the independence of the Judges would be still further controlled and the High Courts themselves made subservient to the will of the executive."

Since the retirement of Sir Comer Petheram, the High Court of Calcutta at all events *has* been subservient to the will of the executive. His Lordship will have seen that to please the executive dissentient voices even in their own midst are suppressed, and that a majority of the Court are willing to condemn a man unheard.

The Government of India show their consciousness of the weakness of their position. They feel that they can hardly charge me in so many words with successfully exposing their own shortcomings. They accordingly disguise my real offence in a general charge of "repeatedly abusing his official position and powers."

Has a single member of the public charged me with any such abuse, either before the judicial tribunals or before themselves? Is it the case of the two Governments that people are afraid to complain of me—that the public believe me to be a special favourite of the powers that be? Is it from fear that people greet me with "ovations"?

If it were true that I have repeatedly abused my official position and powers the people would hate me, and the people who knew me best would hate me most. And if there were one class to whom I was more odious than another it would be the legal profession, for the members of the Bar are not only the leaders of such public opinion as there is in India, but from their very calling are the foremost champions of popular liberties.

What, however, does His Lordship find? That so far as appears upon the surface I am one of the most popular servants he has in India; that the people select the very moment when they no longer have anything to fear or hope from me to evince not their aversion but their goodwill; that the Bar are foremost in their expressions of sympathy; and that these expressions are loudest from those places where I have actually exercised my official powers.

From my own people of Noakhali; from those of Barisal, where I was stationed for six months, in 1895-6; from the Dacca Bar, the strongest Bar in India outside the Presidency towns; from the Bars of Mymensingh, Tangail, Comilla, Nadia, Purnea, Patna, Bhagalpur—even from that of Amritsar, the sacred city of the Sikhs—from countless private persons of every caste, creed, and rank in life, I have received the most gratifying messages of sympathy and esteem.

I will not weary His Lordship with particulars, but I think it will suffice to quote the resolutions from some of those places where I have been actually stationed, and where accordingly I should be best known.

And first I will quote the resolution unanimously adopted by the Noakhali District Court Bar Association on the 9th March, at a meeting at which, with the exception of the Government Pleader, every member of that Bar, including the two pleaders who defended the accused in the Noakhali case, was present:—

"That this Association records its deepest sense of sorrow at the sad news of suspension of our illustrious, most conscientious, and upright Judge, Mr. A. P. Pennell, and considers it a great calamity."

I was stationed at Noakhali from November, 1899, till March, 1901.

The Judge's Court Pleaders of Mymensingh wired me on the same day (9th March):—

"Members Mymensingh bar assembled sympathise most sincerely with you in your present troubles, and resolve to render you all assistance in their powers."

I subsequently received the following separate telegram from the Mukhtears (or solicitors) of the same place, which will show *inter alia* how the Mymensingh Policeman's case was regarded locally:—

"The Mukhtears of Mymensingh passed the following resolution:—'That the Mukhtears of the Mymensingh town desire to place on record, in a meeting assembled at their Earle Bar Library, their deep sense of hearty sympathy at the sudden suspension of Mr. Pennell, Sessions Judge of Noakhali, and formerly Sessions Judge of Mymensingh, for his fearless independence, self-sacrifice, and unflinching devotion to a sense of justice and duty—a foretaste of which the people of Mymensingh had in the Mymensingh Police Sub-Inspector's case, and which they have found consummated in the famous Chupra and Noakhali cases.'"

The Bar of Tangail, a sub-division of Mymensingh, which is itself as large and important as most districts, sent me a separate resolution.

I was twice stationed at Mymensingh, first as Additional Judge, March to May, 1895—later as District Judge, from October, 1897, to September, 1898.

Next I will quote the resolution adopted by the Dacca District Bar on the 14th March, 1901:—

"That the members of the Dacca Bar, at a meeting, desire to place on record their sense of deep regret at the suspension of Mr. A. P. Pennell, late District and Sessions Judge of Noakhali, some time Additional District and Sessions Judge here, who, by reason of his high sense of justice and fearless independence in the discharge of his judicial duties, has won the admiration of the profession and the public alike."

I was additional Judge of Dacca for three months of 1895. I was also stationed in the District for a year in 1886-87.

Lastly, I beg to quote two resolutions passed at a meeting of the legal profession held on the 20th March, at Kishnaghur, the head quarters of the District of Nadia, which I may say is the religious and literary centre of the Hindus in Bengal. I was stationed at Kishnaghur from December, 1887, to July, 1888:—

"I. That this meeting wishes to place on record that Mr. A. P. Pennell, M.A., I.C.S., while acting as an Assistant Magistrate in this district many years ago, made himself highly popular with the members of the legal profession and the outside public by his able and impartial administration of justice, and by his genial courtesy to all who came in contact with him.

"II. That this meeting expresses its deep regret at the undeserved suspension of Mr. A. P. Pennell by the order of the Local Government, on the recommendation of the Honourable Judges of the Calcutta High Court."

In face of these testimonies, to which I could add many others, can His Lordship believe that I have repeatedly abused my official position and powers; that the pretence that I have done so is anything but a monstrous fiction? And what, I would ask, should he think of those who put forward this fiction to ruin me?

It may be, as urged by the Lieutenant-Governor, that my action disorganises his administration. But in view of the facts I have stated, is it not possible that his administration may be all the better for a little disorganizing; that, as Sir Alexander Mackenzie said in Burma, the thing needed is not to fall foul of Mr. Pennell, but to take proper steps to prevent the recurrence of the evils that he has brought to light; that the fact that Sir John Woodburn's personal interests require that I should be crushed, and the abuses hushed up, is no good reason for doing either the one thing or the other?

I have now dealt with the charge of abuse of my official position and powers, so far as it relates to my service before the Noakhali case. There remain (1) the charges connected with the Noakhali case; (2) general charges of insubordination and vanity. With these last I will deal shortly hereafter—for the present I will confine myself to my action in the Noakhali case, and the prosecution which I instituted against Mr. Reily, the Police Superintendent of the Noakhali District, for perjury and forgery in connection with that case.

And my first submission is that His Lordship should attach no importance to the opinions *as opinions* of the Government of India and of the Government of Bengal on matters in which Lord Curzon and Sir John Woodburn are personally interested—for that those gentlemen cannot be allowed to pose as Judges in their own case. Nor, I submit, should he accept without question, as they apparently intend him to do, denials or statements which are in many cases intrinsically improbable, but which they are vitally interested in making. If their word is to be taken for anything they may choose to say, any representation of mine to the contrary must needs be abortive. Their statements should, I submit, be weighed in the same balance as those of any body else; it should not be assumed that whatever they say must be true, however improbable it may be in itself, and however strong may be their private motives for saying it.

To begin with the Lieutenant-Governor of Bengal—"It is due to Mr. Rampini," he says, "that it should be mentioned here that he has volunteered to Government an explanation which, as might have been expected, is perfectly satisfactory." Sir John Woodburn has not given Mr. Rampini's explanation—he does not give His Lordship the chance of judging for himself whether the explanation is satisfactory—he expects His Lordship to accept his own opinion on the point without question. I, on the other hand, submit that it is difficult to imagine that any explanation which Mr. Rampini chose to give *would be* other than perfectly satisfactory in the eyes of Sir John Woodburn, or that it would appear on paper to be given under compulsion. And to assist His Lordship in the absence of the explanation itself in forming an opinion of his own, I may add that Mr. Rampini cannot deny a single statement which I have made with reference to him without being guilty of deliberate, and what is more, of easily detected, falsehood, that a statement of the facts was published in "Capital" soon after my judgment appeared, without contradiction on his part, and that Mr. Yule had shown me original papers, which prove that Mr. Rampini not only contributed the largest money stake, but was actually Chairman of the syndicate formed for promoting "our Company made to sell."

Next Sir John Woodburn says, with reference to Mr. Buckland's letter of the 26th January, Exhibit X 18, "Nothing could have been further from the intention of Government than to interfere with or appear to interfere with or intimidate Mr. Pennell in any way."

I certainly never expected Sir John Woodburn to *admit* that he meant to intimidate me; but I cannot concede that any importance should be attached to his *denial*, apart that is from any evidence or arguments he may offer to show, that the letter was *not* designed to intimidate me.

Sir John Woodburn goes on to say that up to the 8th February Government had no knowledge of the case, or any information whatever regarding it. I will adduce later on some facts which appear to me to prove the contrary. Here I will only remark that a denial of knowledge is what we might expect whether Sir John be innocent or guilty; that this being so, the denial is no proof of his innocence. Men who do these things must lie about them; they cannot afford to tell the truth.

Sir John Woodburn considers the language of my memorial of 21st March to be disrespectful and improper. It may be—but whether it is so or not, it is natural that he should consider it to be so, inasmuch as it imputes disgraceful conduct to himself. His opinion cannot be regarded as settling the question, nor can he be deemed an impartial judge.

"His Honour's" opinion that I cannot be again placed in the office of Civil or Sessions Judge may be, and very probably is, genuine enough—I am ready to believe that he would be very sorry, notwithstanding his "consideration" and "compassion" for me, to see me back again—but I submit that his opinion may be coloured by personal bias. Sir John Woodburn's denial that my transfer to Noakhali or my retention there had anything to do with the Chupra case was to be expected. He *must* say that. Nobody else believes him; perhaps His Lordship may. As also his statement that the Noakhali District is not in any sense an undesirable one.

It is natural that Sir John Woodburn should believe, or say that he believes, that my statements (slanders and insinuations he calls them) have been inspired by malice; that I had no justification for my "surmise" as to the letter of the 26th January. What is not natural is that anyone besides Sir John Woodburn should attach any importance to Sir John Woodburn's belief on these questions.

The fact that Sir John Woodburn concurs with certain opinions expressed by the High Court does not, I submit, add any extra weight to those opinions. He naturally concurs with any opinion which is in his own favour.

In his letter, No. 299, A.D., dated 19th May, reporting my departure from India, Sir John Woodburn, not content with the roles of accuser and Judge, assumes that of prisoner's friend. He has no plea, he says, to offer on my behalf in mitigation of sentence. His Lordship will excuse my remarking that I have given Sir John Woodburn no power of attorney, and that if I could not plead my own case, he is the very last advocate I would choose.

The same affectation of a judicial attitude is to be found in Lord Curzon's Despatch. It is natural that Lord Curzon should be of opinion that my conduct entirely merited any censures the Judges of the High Court might think fit to apply to it; that indignation directed against himself could not be righteous; that he should think that my accusations against the Government of India (himself) in connection with the notorious Chupra case were destitute of any truth from beginning to end. But what does not seem to have occurred to Lord Curzon is that his opinions on these matters may be less valuable than those of persons less directly interested in them.

I will ask His Lordship to form his own opinion on these matters—not merely to say "ditto, ditto," to those of Lord Curzon and Sir John Woodburn. The opinions of these latter might be of great value, if they were not themselves upon their trial; as it is I submit that those opinions as opinions, and apart from the grounds (if any) on which they are based, are of just no value at all.

There remains the opinion of the High Court, or rather of the two Judges, Amir Ali and Pratt, who decided the case of King-Emperor *v.* Sadak Ali, and others, and King-Emperor *v.* Reily. Whatever opinions the rest of the

Court, or rather the majority of the Court, entertained were neither formed nor expressed judicially—are incapable of citation in any Court of Law. No Judge can either form or express opinions judicially, except when deciding a case in due course of law.

Now, these two Judges were of opinion that in the Noakhali case I had reversed the wholesome rule and right principle of law—that a person accused of a crime should be presumed to be innocent until he is proved to be guilty—that Aslam and Anwar Ali, two of the persons I had convicted of murder, were not guilty; that Sadak Ali had not had a fair trial; that I had started upon the trial with the settled idea that not only the accused before me, but the others, whose names had been given by the complainant and his partizans, were guilty. That in my observations on the conduct of the Superintendent of Police I had exceeded all legitimate limits of criticism; that I had introduced into the judgment matters which had not the remotest relevancy to the case, and comments on persons who had no connection or concern with it; and that I had introduced upon the record, against all rules and principles of evidence, documents which had not the faintest bearing on or connection with the case which I was trying. In the Reily case the same Judges expressed the strongest disapproval of my action in committing Mr. Reily to prison for nine days when there was not even a *primâ facie* case against him. They held that "apart from the illegality of the order of commitment, and dealing with the merits of the case, there was no ground for the proceeding," and that "in my judgment, beyond surmises and assumptions, they found nothing to justify the view that Mr. Reily had wilfully perjured himself or intentionally given false evidence in Court. There was less ground even for the charge of forgery."

The judgments being long, I have quoted as far as possible from the summary of them given by the Government of India, which is not likely to minimise the case against me.

Now, the opinions expressed by the learned Judges must, in the very nature of things, be based upon certain findings of fact. If it be believed that Aslam and Anwar Ali were not guilty, and that I had no good reason for believing them to be guilty; if it be believed that Mr. Reily did *not* commit perjury and forgery, nor had I any good reason to believe that he did; if I *did* prejudge the case against Sadak Ali and his co-accused; if it be held that the letter of the 26th January, which is now admitted to have been sent by Sir John Woodburn's orders, was not intended as a threat, and that I had no reasonable ground for believing it to be such, then it may be that the strictures of the learned Judges are justified. But if the findings with regard to these facts be in my favour, then certainly those strictures are quite unjustifiable.

I quite agree that my "attack on constituted authority," and the documents by which I supported it were foreign to the question of the guilt or innocence of the accused—had no more to do with that question than the letter from Mr. Bourdillon, which I filed with the record of the Chupra case, asking me to try that case *in camera*, had to do with the guilt or innocence of the appellant, Narsingh Singh. But I introduced those matters, and I submit that I was fully justified in introducing them—nay, that it was my duty to introduce them—because I believed, and had good cause to believe, that the executive Government was attempting to intimidate me—not, indeed, in the interests of the men I was then trying, but in the interests of Mr. Reily, their European District Superintendent of Police, whom they knew I intended to prosecute. Will His Lordship for one moment hold that *if* I entertained such a belief, even though I wrongly entertained it, I was doing other than my duty in denouncing the attempt to intimidate me? If I believed, whether rightly or wrongly, that it was my duty to prosecute Mr. Reily, and that Government were bent on burking the prosecution, was it not my duty to endeavour to prevent their doing so? Have the learned Judges found that I did not believe, that I did not have grounds for believing, that I had been threatened? No, as I have said, they shirk the question—express no opinion one way or the other. They might say with the Psalmist: "Lord, my heart

is not haughty, nor mine eyes lofty; neither do I exercise myself in great matters or in things too high for me." Enough for them that I speak evil of dignities; to their mind there can never be justification for introducing the wrong-doing of "high-placed officials," so it were superfluous to enquire into the reason for its introduction. Like the Judge who tried M. Zola, they hold that the interest of the State allow high-placed officials to do such things, but do not allow them to be spoken of.

His Lordship has not, therefore, the advantage of any even professedly unprejudiced opinion on this all-important question—whether the letter of the 26th January was intended to convey a threat, or rather whether I had reason to believe that it was intended to convey a threat.

The Government of India sees the importance of the question, though the High Court may not. "The fact," they say, "that there was no foundation for Mr. Pennell's contention that this letter constituted an attempt on the part of the executive Government to intimidate him with a view to prevent him from directing the prosecution of Mr. Reily is completely established in the Bengal Government's letter." Unfortunately, however, Lord Curzon, besides being implicated in my judgment, had so committed himself by his action with regard to my suspension that he can hardly be considered unprejudiced. And so I must once more ask His Lordship to form an opinion for himself upon the matter.

The Lieutenant-Governor states that when he sent me the letter of 26th January (he now admits by implication, vide his Enclosure No. 29, that it was sent by his orders) he knew nothing whatever of the murder case—that he still had no knowledge of the case till the 8th February—that my letter of the 31st December had been overlooked, and that it came before him *again* during the month of January in connection with the casual leave of Judges; that it was a mere coincidence that his letter of the 26th January was written the day after the murder trial ended. He says that he consulted the Judges of the High Court about casual leave, and that in consultation with them he issued a Circular on the subject on the 14th February. He indirectly puts this forward (it has no other relevance) as a corroboration of his story about the subject of the casual leave of Judges coming prominently to his notice. He does not say *when* he consulted the High Court, in what part of January the subject of the casual leave of Judges came prominently to his notice, or what it was—apart from the possibilities contained in my letter of the 31st December—which brought it to his notice.

It would, perhaps, be a sufficient rejoinder that even if these facts were true, they were not known to me—that on the facts known to me I had every reason to believe that the letter of the 26th January *was* an attempt to intimidate me. But I will go a great deal further than this: I will ask His Lordship to hold, in the face of Sir John Woodburn's present statements, that he *was* attempting to intimidate me, and that he is now lying in self-defence.

I submit that the consultation with the High Court about the casual leave of Judges—the issue of Circular 1 A, under date of the 14th February—are mere attempts to fabricate evidence, so as to account for the despatch of the letter of the 26th January.

Does Sir John Woodburn give a single means of checking his statement, or rather his suggestion, that it was something other than this case which caused my letter of the 31st December to "turn up again?"

The coming into prominence of the casual leave of Judges—the despatch of Exhibit X 18 on the 26th January—was the latter the effect of the former, or were they both effects of the *same* cause, and that cause the necessity of staying my hand?

Does His Lordship believe that my letter of the 31st December was *overlooked?* Even His Lordship must know that ever since the Chupra case I have been a marked man. Has the Lieutenant-Governor attempted to contradict my statements (vide page 158 of the High Court's Paper book [Appendix, page 257]) with regard to that letter? Will not His Lordship believe

that Sir John Woodburn and his friend, Mr. Rampini, were the laughing stock of Calcutta official circles, owing to the correspondence which ended in Exhibit X 17? Will Mr. Buckland deny that he himself laughed heartily over the matter when I saw him on the evening of the 31st December? Was it a thing Sir John Woodburn was likely to forget or to overlook?

The reason why no notice was taken of the "imputation" was not that it was overlooked, but that in the absence of any very strong motive for bringing pressure to bear upon me, Sir John Woodburn did not think it good enough to go on with the matter, and so expose himself and Mr. Rampini to further ridicule.

If Sir John Woodburn were so anxious for Mr. Rampini's reputation, how is it that he waited with such exemplary patience for an answer to his letter of the 26th January? That the Circular was issued without any such answer, that not even a reminder was sent me?

If Sir John Woodburn had really been anxious for Mr. Rampini's reputation—if he knew nothing of the case I was trying—it was to be expected that he would insist on an immediate reply. If, however, the anxiety were a mere subterfuge to veil a threat, and the threat failed of its effect, then, indeed, there was no motive for his proceeding with the matter further.

Can His Lordship accept Sir John Woodburn's explanation of his omission to answer my telegrams—sent by me be it remembered, not as a private person but as a Sessions Judge? In trying a case, am I his subordinate? Does he consider himself above the law?

Exhibit X 18 was published for the first time in the "Bengalee" of February 26th. On the afternoon of that day was despatched the letter (Enclosure No. 29) in which for the first time Sir John Woodburn admitted by implication ("I have *again* laid the papers before the Lieutenant-Governor") that the letter of the 26th January *was* written under his orders. Till then Sir John Woodburn might yet have entertained the hope that it would not be published. This hope being removed, he attempts to brazen the matter out as he has subsequently attempted to brazen out his attempt to procure Mr. Reily's release. When it is useless for him any longer to deny the thing, he admits it, as though to say, "Well, and what if I did?"

If Sir John Woodburn so resented my request for information on the subject in January, why did he volunteer it on the 26th February? Why the "again"?

Can His Lordship believe that my telegrams of the 29th and 31st January did not even excite Sir John Woodburn's curiosity.

I will now deal with the question whether Sir John Woodburn's statement that he knew nothing of the case till the 8th February can be accepted as true.

From the 9th to the 14th of January Mr. Bignell, the Deputy Inspector-General of Police, an officer whose headquarters are Calcutta, was at Noakhali inspecting the Police office. Mr. Bignell is brother-in-law of Mr. Bourdillon, the Permanent Chief Secretary to the Government of Bengal.

On the 14th January, as admitted by Mr. Reily in his evidence (page 48 of the Paper-book [Appendix, page 194]), I went to the Circuit House, where Mr. Reily lives, and spoke to him about this case. I told him that so far as I could see he had made a mess of it, and that the probability was he would get into trouble over it. I said I thought he had better try and get a transfer, as if he were out of the way nobody was likely to say much about his share in it. Mr. Reily, whom I knew to have been very much censured by Mr. Ezechiel in connection with the case, assented, but said that though he would like a transfer, even apart from the case, he had failed to get one; he asked me to speak on his behalf to Mr. Bignell. I told him I had thought of doing that, but though it would be nicer if I did it at his request. It was agreed between us that he should broach the subject to Mr. Bignell in the course of the day, and that I would speak to Mr. Bignell in the evening.

From his evidence it appears Mr. Reily did speak to Mr. Bignell that afternoon. In the evening I myself went to see Mr. Bignell, and had a talk with him about the matter. He spoke with some bitterness about Mr. Reily, who, he said, would get any District into disorder in six months; and said he had found the Police office in a very bad state, and that Mr. Reily was quite in the hands of his subordinates. He said that there were three other District Superintendents like Mr. Reily, that if it were simply a case of moving them among themselves, he would'nt mind, but he could'nt send one bad officer to succeed another, and it meant he had to shift a *good* man every six months for each of them. Moreover, the Inspector-General could'nt make the moves himself—he had to get the Lieutenant-Governor's consent, and the Lieutenant-Governor had already refused to move Reily. Mr. Bignell admitted, however, that the District was in a shocking state, and finally said that he would write demi-officially and tell Government that they *must* move Reily—there was no help for it.

Mr. Bignell left Noakhali next morning. A few days later Mr. Ezechiel (the former District Magistrate), who had come to Noakhali to depose before me in another case, and was staying with Mr. Reily, told me that Reily had received a letter from Mr. Bignell, and was keeping very quiet about it.

I submit that I was justified in inferring from these facts that Mr. Bignell *had* written to Government about the matter. Mr. Bignell is now, I believe, on furlough, and His Lordship will be able to ascertain the facts from him direct. But whether he did or whether he did not, it was natural that I should believe he did. I do not, of course, say that he wrote *officially*—that would be most unlikely—these things in India are arranged demi-officially. If, therefore, the Bengal Government simply say there is no *record* of his writing, it will by no means conclude the matter.

I may mention that I discussed the case with Mr. Bignell, and in reply to his questions told him that so far as I could see Reily was not morally to blame—that he had merely displayed abnormal stupidity, and implicit reliance on (relatively) clever but worthless subordinates.

My speaking about the matter at all while the case was pending may seem to require explanation. I have never done such a thing before. My object in doing it then was to save Mr. Reily.

I am now accused, not by Mr. Reily himself, of "malevolence" and "vindictive malice" towards him. What enmity I bear him personally has never been stated. I say, on the contrary, and am in a position to prove, that I was on most friendly terms with Mr. Reily and his family, that hardly a day had passed in the year preceding that I had not seen them. There are only three or four of us in Noakhali, and people so placed do not remain indifferent to one another. It was never said before this case that I *disliked* Mr. Reily.

All I knew about the case before the 5th January, when I read the depositions, was what I had been told by Mr. Ezechiel. Mr. Ezechiel, as is usual in our small communities in India, used to talk over his work with me, and I remembered that he had been very angry with Mr. Reily's stupidity, as he considered it, in connection with this case. Neither Mr. Ezechiel nor I however at that time thought the case would affect Mr. Reily personally. Mr. Ezechiel attached importance to it not as affecting Mr. Reily, but as affecting Osman Ali; and any personal interest Mr. Ezechiel felt in the result was derived from the fact that this Osman Ali was the pet subordinate of the permanent District Magistrate, Mr. Cargill, between whom and Mr. Ezechiel there was no love lost.

I thought that the case would thoroughly expose Mr. Reily's incapacity (which was, of course, well enough known to me personally before), but I did not anticipate anything worse. If, however, he remained in Noakhali it was reasonably certain that the revelations of the case would lead to attacks upon him in the native press, and as he was by no means—till I made him so—a favourite of Government, I thought he might get into serious trouble, very

possibly be reduced. He had only just been confirmed as a District Superintendent; for though 38 years of age, he had joined the Police late in life, and had taken many years to pass his examinations. He is a married man with a family. He had no personal enemies in Noakhali, and if the native public knew he was going they were not likely to clamour for his transfer. If they did not so know, then certainly they would have had some excuse for clamour. Moreover, as I have pointed out in my judgment, it was necessary to put things right. As I put it to Mr. Bignell, the man had to go; the only question was whether it should be said that three years of Reily were too much for Noakhali, or that three years of Noakhali were too much for Reily. Mr. Bignell concurred with me that the latter was the preferable alternative.

I have pointed out that there are good reasons for believing that Government must have heard about the case, and Mr. Reily's connection with it, from Mr. Bignell in the middle of January. But the matter by no means rests here.

On the 29th January the District Magistrate, Mr. Cargill, sent me a letter asking if he could take copies of papers as soon as judgment was delivered. It is the first time I have ever known a District Magistrate apply for a copy of a judgment which has not yet been pronounced; and even at the time of writing my judgment I suspected, and expressed my suspicions, that he was acting under orders. (Vide page 142 of the Paper-book [Appendix, page 248]. Mr. Cargill's letter, unfortunately, is in the B. file, and has not been printed.)

The District Magistrate renewed his application on the 1st February (vide Order No. 21) and again on the 6th February (vide Order No. 23).

The District Magistrate, I may point out, is my subordinate *quoad* the matter in hand. It is, *prima facie*, unlikely that he would send these impertinent reminders of his own accord. It was of course well known to him that judgment had not been delivered—he was living in the same house as Mr. Reily and meeting the latter daily—moreover the Government Pleader must have told him.

But further, in Mr. Reily's application for bail to the High Court on the 20th February it is expressly stated that the copies were applied for, not by the District Magistrate, but by the Local Government. The Government of India have not thought it desirable that His Lordship should have a copy of this application before him. I would, therefore, submit that it is printed at pages 106-8 of the "Bengalee's" pamphlet on the Noakhali case, 3rd edition, a copy of which is enclosed (Enclosure Z 1). It was not Mr. Reily's interest, though it may have been the Local Government's, to conceal or minimize their concern on his behalf. In the same petition Mr. Reily has also stated (what Government would very much like to be able to deny) that it was under instructions from them that the Government Pleader supported his application for bail.

It therefore appears that the Local Government were applying for copies as far back as the 29th of January. But yet they have the effrontery to say that they knew nothing about the case till the 8th of February!

One more proof that Government knew of the case is to be found in their paragraph 6. "On the 15th of February," they say, "a telegram was received from the Magistrate of Noakhali *to the effect* that in the Chur Uria murder case, Mr. Pennell had charged the D. S. P.," &c. If there had been no previous correspondence with Government about the case, why should the District Magistrate speak of the Chur Uria murder case? Why, again, should he telegraph to Government direct, instead of to his immediate superior, the Commissioner of Chittagong? Last, but not least, why is not the telegram quoted? Why is its "*effect*" only given?

Is it a usual thing for a Sessions Judge to order a District Superintendent of Police, as I ordered Mr. Reily on the 21st January, to be present throughout the proceedings—not to leave Court till judgment is delivered? Does Mr. Cargill, living in the same house as Mr. Reily, say that he did not know of this? That he did not understand what it meant? That he did not inform his superiors of it? That he knew nothing of the recognizance bond executed

by Mr. Reily on the 7th February? Is it contended that it is usual to take such bonds from District Superintendents of Police?

What does Mr. Reily himself say (or rather have said for him) in his application to the High Court for bail?

"That after your petitioner's examination was over, the Sessions Judge verbally ordered that your petitioner should attend Court till the judgment was delivered, and in pursuance thereto your petitioner was present throughout the trial, and the judgment being postponed from day to day your petitioner attended Court on several day fixed for delivery of judgment. On one of these postponed days your petitioner came to Court, and finding that a notice had been stuck up that judgment would not be delivered that day, left the Court before the Judge came to Court. The Judge, not finding him in Court, sent for him and took recognizance of Rs. 500 from him, and got the bond attested as witness by the 3rd Munsiff Babu Lalit Kumar Bose."

Can His Lordship, in view of these facts, entertain any doubt that the Bengal Government knew of "the Chur Uria murder case," and Mr. Reily's connection with it, all along? That "the appearance, in a native newspaper published in Calcutta, on the 8th February, of certain paragraphs purporting to be extracts from the order sheet "was neither the only nor the first time" their attention was drawn to the possibility of the development of a sensational case at Noakhali?"

What can His Lordship think of the action of the Bengal Government when they knew Mr. Reily was arrested? Their order to the Magistrate, on the morning of the 16th February, to "apply for bail?" On their own showing Government knew nothing of the merits of the case; all they knew was that I had publicly expressed a suspicion that they had attempted to intimidate me in connection with it. I submit that the very fact of my having expressed that suspicion should have put Government on their guard—should have made them especially circumspect—especially careful to avoid any action which might be construed as indicating a wish on their part that the law should *not* "take its course in respect of Mr. Reily." What, however, does His Lordship find? That *immediately* they hear Mr. Reily is in jail, and without knowing anything of the circumstances, they apply to the Court to get him out; that this failing, the Lieutenant-Governor hastens to seek the mediation of the Chief Justice.

I have pointed out in my judgment the irony of the situation (page 139 of the Paper book [Appendix, page 247]):—

"It is the Crown which says that Osman Ali has burked this case, it is the Crown which declined to call Mr. Reily as not being a witness of truth. . . . The Lieutenant-Governor ought in theory to be anxious that these accused men should be convicted, that Osman Ali should be dismissed, and that the evidence which Mr. Reily gives on behalf of the defence should be disbelieved."

It was not I, but his own executive officer, Mr. Ezechiel, who insisted on this case being sent up for trial; it was a member of the Subordinate Executive, not of the Subordinate Judicial Service, who committed the accused for trial; it was the Public Prosecutor, his own pleader, who, at the trial, denounced Mr. Reily's perjury and forgery. Why should the Lieutenant-Governor then be so ready to assume that Mr. Reily was innocent; that he was a fitting object for an interference with the course of law which, under almost any circumstances, would lend itself to the worst construction?

His Lordship may imagine the effect which these proceedings of the Lieutenant-Governor and the Chief Justice—*when known*—had upon the public, and especially upon the native community. Some doggrel lines by a schoolboy of fourteen—a new Lillibullero—have gone the length and breadth of India:—

"The Judge it was the famous Pennell;
I am very sorry to tell
He refused to grant white Reily bail.

"They tried the effect of means of sorts;
One does bullying, one exhorts:
Obdurate Pennell repels, and snorts."

I have spoken of the effect which these proceedings had *when known.* The Lieutenant-Governor now admits that he ordered the Magistrate to apply for bail; but His Lordship need not suppose that he would have admitted it if it had been possible to deny it. I will explain hereafter the circumstances which made denial impossible. Here I will only solicit His Lordship's attention to the curious behaviour of Sir John Woodburn when the Magistrate's application proved unsuccessful. "The Magistrate was *then* informed that his application for bail having been refused, Government could do no more, and that Mr. Reily must take his own motion to the High Court." Why does Sir John Woodburn say *then*? Why does he not give the terms of the communication, or most important of all, its date? Was it sent before or after that Sunday when the Chief Justice's unofficial mediation failed? Last, but not least, why did not Government apply to the High Court for bail on Mr. Reily's behalf? If there was no harm in applying to me, what was the harm of applying to the Criminal Bench? Why was Mr. Reily told that he must make his own motion to them? Mr. Reily was at Noakhali; surely it was easier for Government to move at Calcutta, than for Mr. Reily to do so? Why they had thought he could not "make his own motion" even at Noakhali?

The explanation is, I submit, that what was done at Noakhali few would know and fewer care; that even if the fact that the Public Prosecutor applied for bail under orders of the Magistrate transpired, Government could always say that the Magistrate had acted of his own initiative—out of kindliness to Mr. Reily it would have been said; whereas what was done before the Criminal Bench at Calcutta would have to be done in face of the strongest Bar in India by the Crown's own Law Officers. It was this last consideration which drove Sir John Woodburn to the reluctant conclusion that "Government could do no more."

And now it is time that I should explain to His Lordship how it has come to pass that Government have had to admit that they had already done so much in a matter in which common decency required them to maintain a neutral attitude.

Mr. Roy wrote me on 20th February, 1901, as follows:—

"To-day, at 3 p.m., Hill applied for bail in regard to Reily. The result of the application was, of course, a foregone conclusion. For days past there has been the greatest excitement in Calcutta over this matter. The Government wanted to move through its own law officers, but they were advised not to take this course, so they got the defence pleader up here, and the application moved through a barrister who held no official position, to make it appear as if they had no hand in the matter. . . . I heard a good yarn just before I went into Court. I was told by one of the Juniors that Hill had heard from Henderson that Pratt had told the latter at the club last night that you had telegraphed to the Chief Justice to arrest Woodburn! (This was, of course, a distorted version, probably set in currency by Sir Francis Maclean himself, of my reply to the Chief Justice's wire, in which among other things I had said: "The case should mean Woodburn's dismissal.") That paragraph in the "Englishman" that Government will not interest itself with regard to this matter, but will allow matters to take its own course, was of course inspired. It was put in after they were advised *that any steps taken by them to support Reily openly would be fatal.*"

(The italics are mine.)

I got this letter on the 23rd February. By the same mail I received from the High Court a copy of Mr. Reily's petition for bail, in which it was stated that the Government Pleader had supported the application for bail in my Court *under instructions from the Local Government.*

After reading the two letters in my private room I went into Court. My order, No. 5, dated 23rd February, in Mr. Reily's case will show what I then did:—

"Read memo. No. 783, dated 21st February, from Registrar High Court. The Government Pleader's attention was called in open Court to the statement in paragraph 9 of the petition to the effect that the Government Pleader, under instruction from the Local Government, supported the application (for bail). The Government Pleader states that he was instructed by the District Magistrate to apply for bail: there is an order, he says, Apply for bail. It was an order of the District Magistrate on sight of the telegram. The telegram was handed over to the Government Pleader with the District Magistrate's

order, 'Apply for bail,' endorsed upon it. The Government Pleader afterwards returned the telegram. The Government Pleader says he read the telegram. To the best of his recollection there was an order in the telegram to the District Magistrate to apply for bail.

(Signed) A. PENNELL,
Sessions Judge.
23/2/01."

After writing this order I read it out to Tarak Babu (the Government Pleader) and asked him if it were correct. He said it was. I then asked him to sign it, and said I should be glad if, after he signed it, the rest of the Bar signed in order of seniority. This was done; first the Government Pleader, and then the ten other Pleaders present signed. Babu R. K. Aich, the senior Defence Pleader in the murder case, was not in Court, and so did not sign; but among the signatories are the junior Defence Pleader, Babu Raj. K. Bose; Babu S. K. Som, who is Radha Kant Babu's son-in-law; and Khan Bahadur Bazlur Rahim, who has four times officiated as Government Pleader.

The order having been signed, I returned to my private room, sent for Tarak Babu, and showed him Mr. Roy's letter, in which it was stated that "any steps taken by Government to support Reily openly would be fatal."

I may say that the Government Pleader had *not* in fact supported the application for bail; all he had said was, as stated by me in my order (Enclosure No. 24) passed on that application, "that he had been instructed by the District Magistrate to inform me that the District Magistrate had received a telegram from Government suspending Mr. Reily." The Government Pleader told me then that the reason why he had not supported the application was, as he had told Mr. Cargill at the time, that he did not see how he could support the application when he, himself, was prosecuting, that, therefore, he had simply stated the fact of Mr. Reily's suspension. It will be seen that the Government Pleader saw the impropriety of the Government's action even if his masters did not.

"Quos Deus vult perdere prius dementat," and I may add that Mr. P. D. Roy has since told me in Calcutta that he was actually consulted by Mr. Gupta, the Legal Remembrancer, as to what Government should do to get Mr. Reily released on bail; that he suggested the terms of the telegram to the Magistrate; and that when again consulted on my refusal to grant bail, he advised that Government should move the High Court through Mr. Leith (the Deputy Legal Remembrancer); but this time they were too sharp for him, and would not walk into the trap! It will be seen, however, that owing to his letter putting me on the scent, they escaped at Calcutta only to be caught in Noakhali.

In view of the order on the record of the Reily case, and of the fact that I have a certified copy of it, it was impossible for Government to deny that they had applied for bail. So (as in the case of the letter of the 26th January) they try to put the best face they can upon the matter by admitting it. I would submit that the fact admitted is one of which His Lordship should take very serious notice, quite irrespective of what may happen to me.

Next I would solicit attention to the Chief Justice's telegram. A copy of this telegram and of my reply were published in the "Amrita Bazar Patrika," of March 20th, from which they are here reproduced:—

THE CHIEF JUSTICE'S TELEGRAM.

To			*From*	
Station Noakhali.			Station Calcutta,	
Day.	Hour.	Minute.	Park Street.	
17.	10.	12.	Urgent.	

To	*From*
Sessions Judge.	Person Registrar, High Court.

The Chief Justice wishes to know why bail has been refused in Reily's case, and urges you to carefully reconsider the matter.

MR. PENNELL'S TELEGRAPHIC REPLY.

From Noakhali Sessions Judge. *To* Calcutta Registrar, High Court.

State Ordinary.

Your wire received four fifteen. My order passed yesterday on Reily's application for bail runs as follows :—*Begins :* This application was handed to me about 6 p.m. yesterday, but I declined to take it then. When I was leaving Court yesterday a disgraceful incident occurred. Mr. Cargill, the District Magistrate, accompanied by his wife, waylaid me, and attempted to procure Mr. Reily's release on bail. The District Magistrate is the nominal prosecutor. Mr. Cargill's procedure during the trial has been so outrageous that I had to send the Government Pleader to him to inform him that if he did not desist I should have to punish him summarily, under section 228, Indian Penal Code. This morning he has sent me a letter, No. 347, dated 16th February, intimating that Mr. Reily has been suspended. He has not, however, intimated that Osman Ali, the Sub-Inspector of the Sadar thana, has been suspended, or that any action has been taken against other police officers concerned. The Government Pleader states that he has been instructed by the District Magistrate to inform me that the District Magistrate has received a telegram from Government suspending Mr. Reily. The reason of the extraordinary solicitude of the Crown on behalf of Mr. Reily does not appear. I have noted in my judgment that the executive authorities have endeavoured to intimidate me with a view to preventing proceedings against Mr. Reily. The fact is that they are all bent on screening their subordinate. I think it unsafe to release Mr. Reily on bail, whether suspended or not, so long as Mr. Cargill remains in charge of the district, or Osman Ali—in whose hands Mr. Reily is a mere tool—in charge of the thana in which I am living and holding court, and in which most of the witnesses against Mr. Reily are also living. There has been too much intimidation by the executive already. One of the sections under which Mr. Reily is charged is non-bailable. It is a matter of judicial discretion whether I should grant bail. In the exercise of that discretion I decline to grant bail until the executive administration of this district is in other hands. *Ends.* I may say that Cargill was vitally interested in hushing up case, as pointed out in judgment, and, besides molesting me himself, gave police free hand throughout the trial, witness of murder being dragged away from Court to Osman Ali's thana, on charge which senior Munsif reports false. Chief Justice may rest assured that I have not refused bail without what seem to me strong grounds. If I were up country I believe that till my judgment got into the papers my life would be in danger. The case should mean Woodburn's dismissal. Believe Reily has been suspended only because I stated verbally on Friday night that I would not give bail until he were. Osman Ali, the favourite of Messrs. Cargill and Reily, to whom the whole case is due, and who is like the Kotwal of Lucknow, is still in charge of Sadar thana, and Government Pleader tells me that nominal charge of District Police is with the very Inspector Bharat Chandra Mozumdar who showed himself in murder case powerless to control him.

(Signed) A. PENNELL, Sessions Judge. 17-2.01.

The telegram was despatched on the Sunday morning (10.12 a.m.). The Magistrate had telegraphed my refusal of bail to the Government on the Saturday afternoon.

Can His Lordship for a moment believe that the Chief Justice would have sent that telegram of his own accord? How was he to know that Mr. Reily was in jail at all, far less that he had applied for bail the previous afternoon and been refused? Can His Lordship have any doubt that telegram was sent by Sir Francis Maclean at the instance of Sir John Woodburn?

I extract the following from a leading article in the "Amrita Bazar Patrika," of 19th March, on "Mr. Pennell and the Chief Justice":—

Noakhali is far away from Calcutta. So the inference is that a telegraphic communication must have come to some one in Calcutta, who must have informed His Lordship of the fact of the commitment of Mr. Reily and Mr. Pennell's refusal of bail. For, the case was not officially before him, as the High Court had not then been moved by Mr. Reily. Indeed the case could not have been before him, for the Chief Justice was not presiding over the Appellate Criminal Bench. The question now is, who informed his Lordship of Mr. Reily's difficulty? Somebody must have done it; and this somebody must be in a position to venture upon such liberty. For it is a liberty of a very serious nature to make a request of that sort to a Chief Justice like Sir F. Maclean, who is known to be a great defender of the dignity of his office. So a very high official must have requested the Chief Justice to move that stern Judge of Noakhali in favour of Mr. Reily, and that high official must be of equal rank with, or perhaps superior to, His Lordship. That is the natural inference. For, otherwise, the Chief Justice would have declined to act the part he was asked to do, nay, resented the request in the strongest term possible. But his Lordship did not do it; on the other hand, he sent an urgent telegram to Mr. Pennell, asking him to furnish reasons why bail was refused, and urging that he should reconsider his decision, that is to say, grant the bail.

The comments in that article, and in another article of the 11th March—

"THE AMRITA BAZAR PATRIKA."

Calcutta, March 11th, 1901.

HOW TO MAINTAIN EQUILIBRIUM: OR MR. PENNELL AND MR. REILY.

If it is contended that Mr. Pennell has been dealt with severely, there is no doubt of it that Mr. Reily, on the other hand, has been treated with great kindness by his superiors. Mr. Reily was accused of serious crimes, not by an ordinary man but by a Sessions Judge, who, after a judicial trial, with the help of two educated assessors, had come to believe that he had committed not only perjury but forgery also. As a consequence, Mr. Reily was sent to hajut. This misfortune of his elicited warm sympathies of the official world in his favour. No sooner did the District Magistrate and his wife hear of the misfortune that had overtaken him than they ran to the court, and "waylaid" the Judge before he had left it. This was service indeed! If the Magistrate himself had gone for this purpose that would have been an inestimable service to Mr. Reily. But he did more, he took into calculation the chivalry of Mr. Pennell, and took his wife along with him. Who has ever seen in the annals of the world, extending from Nebuchadnezar to Lord Curzon, a Magistrate and his wife running to a Judge to save from hajut a man who had been committed to take his trial on charges of perjury and forgery.

We mention the names of the Magistrate and his wife first, because chronologically they were the first to appear in the field on behalf of Mr. Reily. But if we had arranged the names of the sympathisers of Mr. Reily according to rank, we ought to have begun with the name of the Government Pleader. Kankabathi was a dear girl who had gone to the middle of the river in a boat to drown herself. First came her little sister to implore her to come back. This not proving successful her brother appeared. But Kankabathi refused to come. Then appeared her mother, still the girl persisted in her determination of drowning herself. At last came her father to persuade her to come back home. That is the beginning of the story, which, however, is known to every girl in Bengal.

In the same manner, Mr. Pennell was approached one by one to be persuaded to desist from sending Mr. Reily to hajut. After the Magistrate and his wife, the Government Pleader prayed to Mr. Pennell to release Mr. Reily on bail. Mr. Pennell refused. Do Government Pleaders move Judges for the release of an accused who had been sent to hajut? But, as we said before, the misfortune of Mr. Reily created for him sympathisers. When the Government Pleader failed, he, to strengthen his position, added that he was moving at the instance of the Magistrate himself. But even this failed to move Mr. Pennell. Then it was intimated to him that the Magistrate had in this matter been moved by the sympathy of the Government itself.

But still Mr. Pennell would not listen, and then the Chief Justice himself sent him a telegram to move him. His Lordship thus wired to Mr. Pennell, through his registrar on the 7th February last: "The Chief Justice wishes to know why bail has been refused in Reily's case, and urges you to carefully reconsider the matter." Who ever was served in the way Mr. Reily was? Do Chief Justices send telegrams to their subordinates in this manner on behalf of an accused who had been adjudged to be sent to hajut? If this was the first time that such a procedure had been adopted, then it showed only the fervour of the sympathy which Mr. Reily's misfortune had aroused.

Of course our gracious Emperor Edward VII. did not interfere in this matter. But Mr. Reily should bear in mind that His Majesty is too far away from here, and is possibly even not aware of the fact of such a great calamity as has overtaken the Empire, namely, the hajut of Mr. Reily. But if the Emperor failed to take any part, his representative might have supplied the omission. His Excellency the Viceroy has not apparently taken any part in the matter. But his Lordship can make up for this omission by giving Mr. Reily's bust a place in the Memorial Hall with this inscription, namely, "Here is Mr. Reily, who had the good luck of being sent to hajut by Mr. Pennell."

This article would remain incomplete if we were to omit the generous part taken by Mr. Justice Ameer Ali. He issued a rule, though the record was not before him. We hope this liberal procedure would be henceforth followed in the High Court. We thank the Judge for having for the first time introduced it. But the nation is obliged to Mr. Ameer Ali for another generous concession. He permitted a telegram to be sent in his name to Noakhali for the release of Mr. Reily on bail. As this is not usually done, this is an exceedingly good reform.

This is what the "Hindoo Patriot" says:—

"Mr. A. P. Pennell having been suspended from the Judgeship of Noakhali, there will be no obligation on him, as recently directed by the High Court, to show cause why his committal of Mr. Reily, the late Superintendent of Police at Noakhali, for trial for perjury, &c., should not be set aside or be investigated by some Judge other than himself. As when the case is called on, in the High Court, no cause will therefore be shown, there will thus be no alternative for the High Court Bench but to make the rule absolute, and discharge Mr. Reily."

Of course our contemporary is joking, for suppose Mr. Pennell had died; instead of being suspended, what would have happened? Would the proceedings against Mr. Reily

be quashed? However, the more the law is trampled down under foot, the better it is for the people.

The Government has always sought to keep the balance even, the equilibrium is never disturbed. If it is contended that some harshness has been shown to Mr. Pennell, the Government has made it up by its kindness to Mr. Reily. This is the first time in the annals of the world that a man found his good luck in his commitment to the Sessions. Who would not after this like to be committed to Sessions by Mr. Pennell?

will show His Lordship how the action of Sir Francis Maclean, of the High Court, and of the Bengal Government, is viewed by the native community. That their feelings are shared by the only section of the European community to which free speech is permitted will appear from the article in "Capital" of the 4th April, to which I have already more than once referred. That article concludes as follows:—

"An impression has been created that the Chief Justice has made an unholy alliance with the Government of Bengal, whereby the support of the High Court will be given to the executive acts of Government in preference to the furtherance of law and justice. That such an impression should have been created is little short of a public calamity; in the face of it Mr. Pennell shrinks into insignificance; and Sir Francis Maclean would be well advised to dispel that impression at the earliest possible moment."

Subsequent events, so far from dispelling, have served only to intensify this impression. I would solicit that unless Sir Francis Maclean is a great deal more successful in "dispelling" it than he has been so far, His Lordship will hold that in this matter he was the catspaw of the executive authorities; that his attempt to procure Mr. Reily's release was instigated by the Government of Bengal.

In view of these outrageous proceedings of that Government directly Mr. Reily's prosecution was instituted—of their first applying for bail themselves, and then beseeching the private mediation of the Chief Justice, in a case in which they were the *prosecutors*—can His Lordship think it *a priori* improbable that they would endeavour to *prevent* the prosecution? In view of the facts and arguments I have adduced, can he doubt that they *did* so endeavour to prevent it? That the letter of the 26th January *was* meant to convey a threat?

What can His Lordship think of Sir John Woodburn's argument that "had they wished to do so, that certainly would not have been the method they would have chosen." I am not concerned with the way in which Sir John Woodburn *intimidates other judicial officers;* the question is how he would be likely to attempt to intimidate me. It is not likely that he would proceed otherwise than gingerly and tentatively with the Judge who had filed his Chief Secretary's letter with the record of the Chupra case; who had proved impervious to his own threats at Noakhali; who had resisted all the arts of the blackmailer at Darjeeling. But for my letter of the 21st May, 1900, I do not believe Sir John Woodburn would have dared to make the attempt at all. As it was, he judged me by himself, and thought that letter—*and* the "Burma papers"—would prevent my bringing matters to a crisis. I take a different view of my own importance. Sir John Woodburn thinks me a very vain person; in my own opinion what is thought of me, what happens to me, is the most insignificant part of this case. "The important thing is not my conduct, but that of Government."

It is Sir John Woodburn, not I, who thinks it material to this case what I thought in May, 1900, of my conduct in October, 1899. As, however, while himself stating that in October, 1900, I repudiated the "unreserved and spontaneous communications" of the preceding May "with similar suddenness and spontaneity," he has attempted to cast doubt upon my statement that I was ill when I wrote them. I annex a copy (Enclosure Z 2) of Major Charles's letter of June 17th, 1900, and would solicit the reference be made to that officer as to the state of my health in the middle of May, 1900, when I consulted him owing to the complete failure of the Civil Medical Officer of Noakhali, a native Assistant Surgeon, to give me any permanent relief. All that Babu Upendra Nath Rai could do for me was to advise me to take leave—no doubt it *was* the best advice—only, it was impossible for me to carry it out. A copy of Dr. Charles's letter, I may point out, was enclosed

with that letter of 28th February (Enclosure No. 31), which Sir John Woodburn says that he laid before the "High Court"; but he has thought proper to keep it back, though if my frame of mind on the 21st May, 1900, is relevant, the letter is, I submit, of importance in judging of that frame of mind.

Such public importance as my letter of the 21st May possesses it derives from the fact that it illustrates the effects of the system to which the executive authorities are so wedded, which, as Sir Richard Garth says, the Government of India approve, and, whatever His Lordship's predecessors may have said to the contrary, would be very sorry to see discontinued. What was my mental attitude for a short time is the permanent mental attitude of three fifths of the English and ninety nine hundredths of the native officials discharging judicial functions in British India. (I exclude the Subordinate Judicial Service, to which other conditions apply.) It may be matter for His Lordship's consideration whether the system which produces such results might not be the better for a little disorganizing, for the Law Courts are, in India, the only real check upon executive high-handedness, and I fear that if I had had another Chupra case to try at the time when I wrote that letter, I might have been a great deal more "charitable" to guilty executive officials than the public interest demanded.

If it be held that the letter of the 26th January constituted an attempt to intimidate me, or even that I believed it to be such, then Mr. Amir Ali's comments on "irrelevance"—"ventilating his own grievances"—"delivering a homily to the public upon the wrong doing of high-placed officials"—fall to the ground. That learned Judge and his learned colleague may be of opinion that I am not justified in publicly protesting against such an attempt, and thereby frustrating its object—the screening of Mr. Reily—but I need have little fear that His Lordship will agree with them. On the question of fact whether I was threatened or believed myself to be threatened, those learned Judges, as I have already pointed out, have observed a suggestive silence.

The prosecution of Mr. Reily was the direct consequence of the Noakhali case. I knew well enough, when writing my judgment in that case, that Government meant to burke that prosecution, and that my only chance of stopping them was to draw public attention to the necessity for bringing Mr. Reily to trial, and the revelation which Government had given of their intentions. I knew well enough also that unless I did this in my judgment I would never get the opportunity of doing it at all. I should have been transferred in the same way as I was at Chupra, and a selected Judge, a native by preference, would have been sent to Noakhali to burke the case. I had to convince the public in my judgment (1) that Mr. Reily had lied and forged; (2) that Government meant he should not be punished for doing so. I had to do this because this was the only means I had of bringing Mr. Reily to trial at all. As I pointed out in my judgment, with regard to the native police officers, it was unnecessary and inexpedient that I should enlarge upon their offences, for the law gave me, *if I were not interfered with*, the power of applying the appropriate remedy. I did not anticipate that I should be interfered with in their cases; I did anticipate I should be interfered with in the Reily case. As a matter of fact I was interfered with in both.

The matters connected with the Chupra case were relevant because I had to read Exhibit X 18, because it was intended that I should read it in connection with all that had gone before, and especially in connection with Sir John Woodburn's threats of the 10th December, 1899. Sir John Woodburn has not ventured to deny that he did on that date use the language I have attributed to him, and I suggest that the purport of what he said was that if I did again what I had done in the Chupra case it would be the worse for me. The question in the Noakhali case was the old question (there is nothing in all these matters—in Chupra case, Noakhali case, and the like which is not really old—which was not threshed out in England long years ago). "Whether if at any time in a case depending before the Judges, His Majesty conceived it to concern him either in power or profit, and thereupon required to consult with them, and that they should *stay proceedings* in the meantime, they ought not to stay accordingly?" Coke's answer was that when

such a case should come before him, he would do what was fitting for a Judge to do. To me the question presented itself in practical shape. What Coke said he would do I did.

Sir John Woodburn has not denied my version of what passed between us on the 10th December, 1899, and if I were to use his own logic against him (vide paragraph 6 of his letter forwarding my second memorial) it may be presumed that he admits it. But he has devoted nearly two pages of print to an endeavour to explain away my transfer to Noakhali immediately after the Chupra case, and my retention there notwithstanding ill-health consequent on the transfer. (The refusal of leave in 1900 he has not attempted to explain.) It may be advisable, therefore, that I should point out certain facts, most of which are admitted, and the truth of the rest of which can easily be verified.

1. That he does not assert that he had any correspondence with *me* about the arrears of Sessions cases, nor does he say with whom he had that correspondence.

2. That he does not assert that he told the High Court I would be sent to Noakhali; but only that another Additional Judge would be sent to Chupra as soon as possible. As I was alone as District Judge, and the place certainly required two Judges, this is quite possible.

3. That although he persists in asserting that Noakhali is a light Judgeship, he has not attempted to meet my arguments showing that it is a heavy one, and that a Subordinate Judge has now been sent there to assist the District Judge, although the latter is a very senior native officer.

4. That he fails to explain why, if it had been settled long before that I was to go to Noakhali, I was not told this, but was, on the contrary, told on the 7th October that I was to remain at Chupra, and gazetted as Additional Judge there.

5. That the appointment of Additional Judge would only have lasted seven weeks longer, as the sanction for it was for six months only, and I had held it for four months odd in March-July, before and after which I was District Judge.

6. That Mr. Fisher was accordingly gazetted as "temporary" Additional Judge.

7. That he was not informed till the last moment that he was to go to Chupra, although it had been known for months when he would be relieved by Mr. Carstairs.

8. That Mr. Huda was similarly kept in ignorance till the last moment that I was to go to Noakhali, or that he was to leave Noakhali. I could not find his letter when I was writing my judgment, but I found it shortly after. Enclosure Z 3 is a copy of it.

9. That there was no necessity for making any "temporary arrangement" at Chupra pending Mr. Fisher's arrival. That Lieutenant-Governor has himself pointed out that the interval between the two Gazette Notifications consisted entirely of holidays.

10. The Lieutenant-Governor says that my copy of the Judgment was not forwarded from Calcutta till the 28th October, and that the Commissioner did not send on a copy till 1st November. I can say from my own experience in the Secretariat that it would be the easiest thing in the world to secure this; the most obvious way would be for the Chief Secretary to send a private note to the Calcutta office *not* to send on the judgment, so that Government need not know of it *officially*. For the same reason the Commissioner, no doubt, did not send it on officially. When it appeared in the "Amrita Bazar Patrika," the motive for concealment disappeared; so the two copies were at once sent from Calcutta and Patna.

11. It is, I submit, absurd to suppose that Sir John Woodburn, especially after I had defied him at Noakhali, would have refrained from mentioning the

real cause of the transfer when interrogated in Council out of consideration for me. It is his own case that he had no other reason.

12. He does not assert that he told me this or any reason in December, 1899. His case appears to be that he had greater consideration for me then than he had in the May following, when the "promise of amendment" was made.

13. I would point out the inconsistency of the case put forward by the executive authorities. Their case is that I *deserved* punishment on account of the Chupra case, and it appears that they did their utmost to get the High Court to punish me, or rather to take such action as would justify them in the eyes of the public in inflicting some severer form of punishment; at the same time, they refrain from taking such punitive measures as did not require the High Court's concurrence, and though it was to their interest that the public should consider me incompetent, were at pains to conceal from the public the fact of my incompetence.

14. The allegations in my judgment as to the eagerness of the executive authorities to get a copy of my judgment have not been traversed, nor is it denied that the Bengal Government consulted Mr. Handley, the Legal Remembrancer, whether the Government witnesses should obey my summons. Government took a great interest in the case before it was decided; they profess to have taken none in the decision.

15. I would specially solicit His Lordship's attention to Sir John Woodburn's statement that "Obviously, no notice whatever could have been taken of the judgment until a copy was before the Government." I submit that this argument is an insult to His Lordship's intelligence, and that Sir John Woodburn by the fact of putting it forward shows himself unworthy of credit.

16. The reason now assigned for my transfer is that it was due to my incompetence as a Judge. How comes it then that I was subsequently (with effect from 2nd April, 1900) promoted from the (old) 2nd to the (old) 1st grade of District Judges—a promotion which raised my pay from Rs. 2,000 to Rs. 2,500 a month—from, say, £1,700 to £2,100 a year? Was this also due to consideration for me? Did Government think I could not live on £1,700 a year? As I said in my judgment I do not believe they paid me £2,000 a year because they liked me. They now propose that I shall get just nothing at all.

The reason which I suppose Government will give for promoting an incompetent Judge like myself is their consideration for me. The reason which I suggest is that I had an appeal to His Lordship—that transfer and the refusal of leave are not, while the stoppage of promotion is, considered a fit ground of appeal. The executive authorities, I submit, made up their minds after the Chupra case to do their very worst to me, subject only to the limitation of doing nothing against which I had a right of appeal. They had tried to dismiss me and had failed; their game now was to force me to resign. The only reason why I did not resign was, as pointed out in my judgment, that I could not afford to. Small wonder, I submit, that the learned Judges of the High Court profess a holy horror at my "ventilating my grievances"! Their abhorrence is perfectly natural for all men were crying shame on them for "supervising" the action of Government.

So much for the reason put forward by Sir John Woodburn, and endorsed by Lord Curzon, for sending me to Noakhali. I now come to the reasons given by Sir John Woodburn for *keeping* me there—for he himself has felt that this part of his conduct also requires some explanation—that he cannot admit I was kept there *as a punishment.* And this is the best Sir John Woodburn can say:—

"It is necessary to make clear that Mr. Pennell has no grievance whatever to excuse even irritation on his part. He was given privilege leave from Mymensigh (of the climate of which place he complained), when he had earned it after return from furlough, and he was posted to Chupra partly out of consideration for his health, because he desired a dry district. He was again told by the Chief Secretary in January last that he might have

leave in the present year. As to his transfer to Noakhali; the reason of it was explained to him months ago; and as to his being kept there for some time he had no ground of complaint. He was liable to serve in that district as any other officer, Judicial or Executive, of the Civil Service, and as he was told in the Private Secretary's letter of the 12th June last, the district is not in any sense an undesirable one. Other officers have served there for many years.

Any grievance which Mr. Pennell may believe that he has against the Local Government is thus entirely the offspring of a mind diseased by suspicion; but the Lieutenant Governor is constrained to the conclusion that he has been animated by even a worse feeling. It is impossible to read the slanders and insinuations of his judgment without the conviction that they have been inspired by malice."

Sir John Woodburn is not very consistent: for "off-spring of a mind diseased by suspicion" implies *belief* in the slanders and insinuations; "malice" denies any such belief. But let that pass.

As I have already stated in my judgment, I applied at Mymensingh for leave on medical certificate. The "statement" of my case by Dr. Ashe is Exhibit X 34 of my judgment; I now annex a copy (Enclosure Z 3a) of Dr. Ashe's formal certificate, recommending me for leave for three months. I consented to withdraw my application for this long leave, and to take short (privilege) leave instead, only because I was promised Chupra. My letter of 5th September, 1898 (Exhibit X 38) was written at Mr. Bolton's instance. I was posted to Chupra not out of consideration for me, but out of consideration for Mr. Place, the permanent Judge there, who wanted privilege leave. If I had gone on leave on medical certificate there was no one who could be sent in his place; and Government could not decently have given him privilege leave, and refused me leave on medical certificate.

It is true that I had complained, many times, of the climate of Mymensingh. Mymensingh is not in other respects a bad station—(for one thing it is a large station, and there is no absence of society), but it is almost the worst District in Bengal for the disease—an aggravated form of dyspepsia—from which I suffer. (This, I may say, is a perfectly well-known fact—Hunter's Gazetteer I believe mentions it—the Civil Surgeon of Mymensingh told me that more than half the cases throughout the district were different forms of dyspepsia.) I even asked Mr. Bolton, but without success, to send me to a fever district as, though I am very subject to dyspepsia, I hardly ever get fever, while with most men it is the other way, and hence the fever districts, Jessore, Burdwan, and the like, are very unpopular.

Dr. Ashe's statement of my case, Exhibit X 34, will show what my life at Mymensingh, after the cold weather ended, was like. I could not, of course, do much work—but with many of the high placed officials in India to get the public work done is a matter altogether subordinate to the gratification of personal spite. The reason why, notwithstanding my complaints of the climate of Mymensingh, and my known ill health, I was kept on there till forced to apply for leave on medical certificate is to be found in the fact that I had been unfortunate enough to incur the ill-will of Mr. Bolton, the Chief Secretary.

In November, 1897, I, with other officers in similar positions, was consulted, demi-officially, by the Bengal Government—with reference to a Criminal Procedure Bill introduced by the Government of India. The Bill was of a most reactionary type, and aroused such strong opposition from all sections of the community that the Government of India were obliged to essentially modify or entirely withdraw all its most important features, but the success of the opposition did not render the executive authorities any less sore upon the subject.

My opinion (Enclosure Z 4) was one of the first to be received. Everything to which I objected, with one exception, had to be withdrawn or modified, and my objections were shared by bodies like the Bengal Chamber of Commerce, the High Court, and the Calcutta Bar. My note, however, was returned to me by Mr. Bolton with a confidential autograph letter (Enclosure Z 5):—

"Your note," he says, "has been found on perusal to be so very objectionable in several places that it cannot be accepted and placed among the papers on the Bill.'

. . . . "The Lieutenant-Governor, I am to say, is surprised that you should have permitted yourself to write as you have done. The remarks to which attention has been drawn indicate, he considers, an extraordinary lack of the sense of responsibility in an officer of your standing, occupying the position of a District Judge. Your note, if placed on record, might give rise to very serious unpleasantness, and to consequences unfavourable to yourself. It will, accordingly, be destroyed, and I am to desire that you will, without delay, destroy the draft, which should not remain on your file."

The draft did not remain on my file—as a matter of fact, I had never sent it into Office, having kept it to show to the Additional Judge and the Joint Magistrate. But I did not destroy it; on the contrary I lent it to Mr. P. L. Roy, and it was found useful both by that gentleman, who drafted the opinion of the Calcutta Bar, and by Mr. Justice Banerjee, who, with Mr. Justice Trevelyan, drafted the opinion of the Calcutta High Court.

This, however, was not the head and front of my offending. I felt considerable indignation at being written to in this way, and went to see Mr. Bolton about it. I told him I had written in perfect good faith; that I had been asked for my opinion, and had given it. He said that the acting Lieutenant-Governor had disapproved of it. I told him I did not mind what Mr. Stevens thought. Mr. Bolton then said that I would, at all events, mind what he (Mr. Bolton) thought, and that he himself disapproved of my note. This irritating assumption of superiority by a man of the most mediocre ability, of whom I was nominally, at all events, independent, and who was speaking on a subject on which his means of knowledge were far inferior to my own, was too much for me; and I told Mr. Bolton that if I could not have his good opinion I would even make shift to do without it. From that day forth I was removed from the list of officers consulted by Government, and Mr. Bolton has lost no opportunity of doing me a bad turn.

It will be seen from what I have said, that the grant of privilege leave, and the posting to Chupra "because he desired a dry district" were not, as Sir John Woodburn would make out, voluntary concessions based on mere love and affection, but were supported by a very material consideration—the withdrawal of my application for leave on medical certificate. This, however, is a side issue: if Sir John Woodburn likes, he may say that I was specially favoured before the Chupra case; the real question is not how his Government treated me before that case, but how they treated me after it.

Sir John Woodburn says that as to my being kept at Noakhali for some time I had no ground of complaint; and gives two reasons:—

1. That I was liable to serve there, and that other officers have served there;

2. That the district is not in any sense an undesirable one.

The first reason rather impairs the effect of the second; if the district is a good one there would be no need for it. I do not suppose that Sir John Woodburn means that all places to which he can send his officers are good ones. No doubt *some one* has to be kept at Noakhali; the question is why *I* should be that one—why the officer selected should be one who was certain to suffer in health, and why he should be kept there (and refused leave) when he *is* so suffering. Sir John Woodburn says I was sent to Chupra out of consideration for my health, because I desired a dry district. He has omitted to mention that Noakhali is the dampest district in Bengal.

Sir John Woodburn says that Noakhali is not in any sense an undesirable district. I say that he knows perfectly well that this statement is untrue; that so far from being a desirable district, it is usually accounted the worst district in Bengal. To Sir John Woodburn's unsupported and interested assertion that it is a desirable district, I oppose the following arguments and admitted facts:—

1. Noakhali is completely isolated from the world. It is 26 miles off the railway; and to reach the railway station it is necessary to make arrangements days beforehand, for there is no regular mode of conveyance.

2. There is no Society. At times there has been only one European official in the place. It is a backwater; the way there leads nowhere else. There is an absence even of native society—the landlords are absentees; no one who can avoid the place will live there.

3. The district is in the Sunderbunds, and is the dampest in Bengal, In 1899 the rainfall was 140 inches. Even apart from the rainfall the place is always damp, being at the foot of the Delta of one of the largest rivers in the world. Every house has its tank, for the water is within two feet of the surface everywhere, and the surface being quite flat, it is impossible to raise a plinth without digging a hole. "In the rains," as I have had occasion to state in my judgment, "practically the whole of this District, except such portions as have been artifically raised, is under water."

4. On account of its dampness it is very unhealthy, at all events for one whose health requires a dry climate.

5. Sir John Woodburn knew I needed a dry climate; his case is that I was posted to Chupra (which *is* a dry place) on that account.

6. He has made no attempt to explain his Secretary's letter of 3rd September, 1900 (not 3rd *December*, as misprinted, Exhibit X 27) in which I am promised a transfer to "a healthy District." If Noakhali is a healthy District, what is the meaning of this? If it is not a healthy District, how can Sir John Woodburn say that it is not in any sense an undesirable one?

7. Some years ago the "Indian Mirror" published a rumour that Sir Charles Elliott was intending to transfer a Sessions Judge, on account of his independence, to "Noakhali or some such unhealthy District." The Bengal Government threatened to prosecute the editor in consequence. (The facts are given in an interview with Mr. Mano Mohan Ghose, printed in the appendix to the memorial on the separation of Judicial and Executive duties in India, submitted to His Lordship two years ago.) What would be the point of this rumour if Noakhali were a good station?

8. If Noakhali were a good District, it might be presumed that good officers would be sent there. The Government case, however, is that I am not merely incompetent, but malicious. Mr. Reily is generally reputed the most incapable officer in the Police Department (though, as I have said, Mr. Bignell thinks there are three other Police Superintendents equally bad), while Mr. Cargill is the Elwes of the Civil Service, an officer whose sordid meanness makes his employment in any less out of the way District impossible. No native goes near him but carries up the man his present; a leading Mahomedan writes me that he has himself given evidence before the Police Commission now (or lately) sitting at Noakhali as to Mr. Cargill's sale of these presents. Mrs. Reily has herself complained to me, with tears in her eyes, of the way in which he sponged upon her husband; while one of the few guests he found it impossible to avoid entertaining, Mr. Rouse, of the Assam Bengal Railway, declined his further hospitality after Mr. Cargill had asked him, over night, whether he should put out one lump of sugar or two for his early morning tea! I am constrained to say this much of Mr. Cargill, as in Major Strachey's letter of the 12th June, 1900, the fact that he asks to remain at Noakhali is adduced as a proof of its desirability. The reasons why Mr. Cargill likes Noakhali are well-known to Sir John Woodburn; they are two; the first, that he can live upon the natives there, which would not be possible in a District less out of the way; the second that a Collector is expected to entertain Inspecting Officers and that all Inspecting Officers give Noakhali a very wide berth, and would do so even apart from the fact of his being Collector there.

9. If Noakhali were a desirable District, why was my request for a transfer refused? Why should I be kept in a place which I do not like, and which does not suit my health when other officers are anxious to go there?

10. If it be a desirable District—a sanitarium like, let us say, Ahmednagar—why should the press, both native and European, continue for months without any contradiction to denounce Sir John Woodburn for sending and

keeping me there? Why should Mr. Banerjee ask questions on the subject in the Bengal Council, and Lord Stanley of Alderley, in the House of Lords? How is it that its desirability was not pointed out in either of those assemblies by official apologists?

I submit that Sir John Woodburn has felt himself obliged to make this statement about Noakhali being a desirable District for the sake of consistency, because he feels that if he admits that the statement to the same effect in his Private Secretary's letter of the 12th June is untrue, the admission will cast doubt upon the statement immediately preceding as to the reason of my appointment to Noakhali. That the statement that Noakhali is a desirable District is a lie is known to every one in the Province of which Sir John Woodburn is Lieutenant-Governor. Can His Lordship—whatever he may do to me—retain the man who has made it in charge of that Province?

Lord Curzon thinks it better not to discuss these matters. He dismisses them with the remark that "if the value of his charges against the Local Government and against other persons may be estimated from the character of the accusations which, in the course of the judgment, he thought fit to level against the Government of India in connection with the notorious Chupra case, we may inform Your Lordship, without any demur, that the latter were destitute of any truth from beginning to end."

Now, my charges against Lord Curzon in connection with the Chupra case are, briefly, that he burked it; that he connived at the nominal punishment of some of the guilty officials, and the complete escape of others; that the Resolution in which he professed to condemn their conduct, or so much of it as he could not whitewash, was a mere attempt to throw dust in the eyes of the British public.

Lord Curzon, no doubt, denies these charges—it was not to be expected he would admit them, but does he deny any of the facts on which the charges are based?

In an article of March 7th, 1901, on "The infamous Chupra case" "Capital," says:—

> "Our readers will recollect this scandalous case in which a district magistrate and superintendent of police conspired together to imprison an innocent man. We were told at the time that those officials had been punished, but this is what we read in a recent judgment of Mr. Pennell."

"Capital" then quotes from my judgment the passage printed at pages 154 and 155, of the Paper-book [Appendix, page 255], beginning: "Mr. Corbett" and ending "to remove his practice elsewhere" (omitting the references to myself and Sir John Woodburn) and adds: "If these statements are true, they are a grave public scandal."

Does Lord Curzon venture to say that these statements—that any one of them—is not true? They are contained in official gazettes. Does he profess that he was ignorant of the way in which the guilty officials had been treated? Has he done anything to alter that treatment since my judgment?

The only things which have happened since that judgment to the people concerned in the Chupra case are that Mr. Bourdillon has received further promotion; that Mr. Twidell has been placed in charge of the important and popular District of Rajshahi; and that Babu Jagannath Sahai, the pleader who defended Narsingh Singh, and who was hounded out of Chupra in consequence, has been entangled by the Police in a false case, convicted by a Joint Magistrate (the Assistant Superintendent of Police, he tells me, sitting on the Bench with the Magistrate, just as Messrs. Bradley and Corbett did with Moulvie Zakir Husain) and only acquitted on motion to the High Court. Nor, apparently, did the action of Mr. L. C. Adami, the convicting Joint Magistrate, incur the reprobation of the authorities, for Sir John Woodburn promptly appointed that officer to be his Private Secretary.

In view of these facts is His Lordship disposed to accept Lord Curzon's assertion of his own bona fides "in connection with the notorious Chupra case?"

These are the only matters alleged to be irrelevant with which I am specifically charged. The Lieutenant-Governor says, "there would be no difficulty in extracting from Mr. Pennell's judgment of 15th February the objectionable passages in which he has introduced irrelevant matters entirely unconnected with the case, and has deliberately (for, on the 4th February, 1901, he recorded that it was necessary he should avoid any hasty expressions) traduced the highest authorities in the country, and not hesitated to charge some of them with falsehood."

The Lieutenant-Governor does not specify any other objectionable passages. Till he does so, and points out how they are objectionable, I cannot be expected to defend them. I am not going to excuse myself before I am accused. Sir John Woodburn might as well abstain from framing any charges at all, and content himself with the remark that there would be no difficulty in framing them. If it is so easy, why has he not extracted the objectionable passages? Those which he has specified, I have sufficiently defended; if the charges be true and relevant, it is, I submit, no crime for a Judge to charge the highest authorities even in India with falsehood. As I myself remarked, "In the course of this judgment I have had to deal with, and expose many, persons in high places; I have yet to learn, however, that an English Judge need apologise for such a course, if justice requires it."

I quite admit that I acted deliberately; I never acted more deliberately in my life. The reason for my introducing these exposures was that I believed that justice—and not abstract justice, but justice in that particular case—*did* require them; that Sir John Woodburn's letter of the 26th January was an attempt to deter me from prosecuting Mr. Reily for the perjury and forgery he had committed in that case; that it showed that Sir John Woodburn was bent on screening Mr. Reily; and that unless I effectively exposed the attempt he would succeed. If Sir John Woodburn had not sent me that letter there would have been no excuse for the exposures. Sir John Woodburn himself will be hard put to it to deny that the despatch of that letter at that particular moment was, to say the least, a singularly unfortunate coincidence—a coincidence even more unfortunate than my transfer to Noakhali immediately after the Chupra case.

Before passing on to the questions of fact directly involved in the Noakhali case, and the findings thereon of the various tribunals which have had to deal with those questions, I think it as well to submit some observations with regard to the alleged intemperance of my language, with reference both to the Chupra and Noakhali cases, but more especially the latter. True, it may be said, that facts are as you say; but even so, why use such strong language about them? Language, as His Lordship's Under Secretary observed in the House of Lords, not usually expected from an officer in your position? And so even the "Westminster Gazette" characterised the language of my judgment in the Chupra case as "needlessly picturesque."

To this I would rejoin that the conditions under which an officer in my position works in India are widely different from those prevailing in England; that the calmness and sobriety so commended of the Executive would, in India, be fatal—that I have to be sensational in order to be effective. If His Lordship will do me the honour to read my judgment—and it is an honour which has been done me by a good many hundreds of thousands of my fellow-subjects in India—he will see that (rightly or wrongly is nothing to the point) I entertain the belief that in any case where the so-called "prestige" of the Executive is concerned His Lordship's subordinate Governments and the majority of their officers will be found banded together in a conspiracy to suppress the truth—a conspiracy to which the Dreyfus case affords the only European parallel I can recall; and that the Judges of the High Court, as at present constituted, are more likely in such a case to consult their own private ends than the interest of justice. There remains only the people, and to arouse their interest I must write a judgment which they will read. To me it is as nothing, "what the superior social section thinks," for I know I shall have *them* against me whatever I write; they are the very people interested in perpetuating the abuses I denounce, in withholding the justice I am seeking to

bestow. I have in my mind when I write, not the classes but the masses—not Society with the big S, but the man in the street. If I were practising at the English Bar, I should not address an Old Bailey Jury in the style which would be most appropriate—because most effective—before a Judge sitting alone in the Chancery Division. I should think, not of the judge, but of the jury. In India there is the further consideration that in a case involving executive prestige the Judge—" constituted authority "—is always, or almost always, found ranged on the side of wrong. Those whom I must try to impress are the jury—the people, and not solely, or even chiefly, the upper class. To do any good at all I must get myself read—to get myself read I must speak in a tongue understanded of the people. I cannot afford to call a spade " an agricultural implement."

Briefly, my point is this: that in the particular class of cases, of which the Chupra and Noakhali cases are instances, justice in India must be sensational in order to be effective. It is very unfortunate that it should be so, no doubt—but I submit that I have to take the world as it is, not as it should be; and that if my " strong language " pains His Lordship, what he should do is not to get rid of me, but so to alter the conditions, as to render it practically possible for me to do common justice in the case which has come to me in a less sensational way.

His Lordship need not think this *a priori* reasoning; it is based on my own experience, and on what I have seen to happen in the case of others similarly circumstanced. If a Judge writes his judgment in a case in which the Executive are to blame less incisively than I do, His Lordship hears nothing of it. His Lordship need not conclude from this that the abuses pointed out by the Judge are rectified. The judgment is pigeonholed—the only person who suffers for the abuses exposed is the Judge—the facts he has brought to light are hushed up. Little enough notice, as it was, was taken of the illegalities and crimes perpetrated in connection with the Chupra case; but can His Lordship believe that if the authorities could have helped it, they would have taken any action at all? Or that it was the facts, and not my presentation of the facts, which forced that action upon them?

My method may be open to criticism, but it has one saving merit—it is effective. It was said of Cicero that if his speeches had been like his poetry the swords of Anthony need have had no terrors for him. I submit that the reason why I have incurred the displeasure of His Lordship's subordinate Governments is not that I have written badly, but that I have written too well; that their rage is the measure of my success.

I think that I should also briefly notice the unworthy insinuations of the learned Judges, seeking thereby to divert public attention from their own neglect of duty in refusing to face the facts, that my exposures of the Executive authorities in the Noakhali case were prompted by indirect motives—that I had made my judgment " the vehicle for giving vent to individual grievances and personal animosity, and that I wanted to pose as the champion of public liberty." These remarks are so well answered in an article in the " Bengalee " of April 24 (Enclosure* Z 6—the article is on page 4—it is No. III. of the Articles on the Noakhali Murder Case) that all I need say here is that the grievances which I ventilated were my grievances as a Judge; and that if I commented on Executive oppressions, it was because those oppressions were directly due to the conscientious discharge of my judicial duties, and for not performing them in the way the Executive would like. The whole point of the Noakhali case was my refusal to submit my judicial discretion to the will of the Executive Government. My personal grievances become of public interest when it is found that they are the result of that refusal, for it is no man's interest that the Judge who may have to try him should be exposed to the influences brought to bear upon me. Judges—even when drawn from the ranks of the Indian Civil Service—are not angels, but men very much like other men; and it is to the popular recognition of that fact that the interest taken in my case is due. In taking the course which I took I was certainly not doing the best (or what is usually

* Not printed.

accounted the best) for myself; but I was doing the best for the public, for my country, and if they will but believe it, for the members of that service my connection with which I am said to be so anxious to sever. As a member of that service (and an Executive officer at that) remarked to me on the voyage home, "They will think twice before they treat another man as they have treated you."

I now come to those findings of the Criminal Bench on which their remaining criticisms are based. But before directly discussing these findings, I wish to invite His Lordship's attention to the position of the finders—of the two learned Judges who formed the Bench. When criticism is avowedly put forward as authoritative, it may not be irrelevant to question the authority of the critics.

There are certain expressions in my judgment which might be considered to cast reflections upon the High Court as a body. In one place I had observed that "what I think the public feel with regard to some of our present High Court Judges is that they are rather too ready to help the Government." (Mr. Justice Pratt calls this "heaping vituperation upon High Court Judges.") "Capital," in its issue of March 14th, "fears there is much truth" in it. I had also ventured to question the propriety of a High Court Judge's assisting in the promotion of "a Company made to sell."

Officials in India are notoriously thin-skinned, and the amour propre of the High Court may have been offended by these remarks; that Mr. Pratt at least took them to heart is apparent. But there are also other and far more cogent reasons affecting not the High Court generally but these two particular Judges.

First and foremost is the fact that they were the nominees of Sir Francis Maclean. The Chief Justice is not himself the Criminal Bench, but he appoints the Criminal Bench; it is he who selects the Judges who are to try a particular case. Now, I do not think His Lordship can entertain any doubt that Sir Francis Maclean's attitude throughout these proceedings has been the reverse of judicial; and under these circumstances the fact that Mr. Amir Ali and Mr. Pratt were Sir Francis Maclean's nominees, and that they were posted to the Criminal Bench as soon as this case was known to be on, would alone justify me in asking His Lordship to regard them with considerable suspicion.

Apart from this those learned Judges have reasons of their own for viewing me with disapproval. I have animadverted in my judgment to the "guinea-pigging propensities of certain high officials." I understand that some months back there was considerable discussion in Parliament as to the propriety of His Lordship's Under Secretary retaining even a nominal connection with the Stock Exchange. His Lordship can have little conception of the extent to which Stock Exchange influences are beginning to permeate official life in India. Before long it will be rare to find a high Anglo-Indian official who is neither a guinea-pig in esse nor a guinea-pig in posse. I commented in my judgment on the fact that Mr. Justice Tottenham was a Director of a wine and whisky business, which has since failed; and, Mr. Justice Rampini's connection with a company-promoting syndicate, or rather an allusion of mine to that connection, was the very means by which Sir John Woodburn endeavoured to stay my hand towards Mr. Reily. It was, therefore, singularly unfortunate that the two Judges selected to try the appeal are both by no means free from connection with company flotation. Some time back the name of the Hon. Mr. Amir Ali, Judge of the High Court, Trustee for the Debenture-holders, was widely advertised by Messrs. Shaw, Wallace, & Company, of Calcutta, as an inducement to the public to subscribe to the shares and debentures of the Serampore Cotton Mills, Limited, and about the same time the Hon. Mr. Justice Pratt's attendance at the opening (*not* at Calcutta) of the Ranaghat-Krishnagar Light Railway, a concern promoted by Messrs. Martin & Co., with which the learned Judges can certainly have no local connection, was given equal publicity. I have been a long time out in India, so I cannot tell whether Her Majesty's

Judges in London go in for this sort of thing; but there are some people old-fashioned enough to disapprove of it. It is, no doubt, merely a fortuitous coincidence that I have been virulently attacked by the Saturday Review, with which I understand Lord Hardwicke is connected; but I may be excused for the suggestion that the Honourable Justice Amir Ali, and the Honourable Justice Pratt might have some fellow feeling for the Honourable Justice Rampini.

I would further solicit attention to the fact that the opinion entertained by the High Court of my work generally seems to have undergone a remarkable change since I took up the Noakhali case. I have already pointed out that up to that time there had only been one case, in the 13 or 14 months that I had been at Noakhali, in which they had even *modified* a decision of mine. I think I am correct in saying that since the 26th January there has not been a single appeal against my orders heard by the High Court (*i.e.*, by these two Judges) in which those orders have *not* been *reversed;* certainly nine or ten orders have been so reversed. It would almost seem that before I decided to prosecute Mr. Reily I could do no wrong in the eyes of the High Court; but that after I so decided no decision of mine, whether passed before or after the Noakhali case, could possibly be right. There are two explanations possible: either the quality of my work has suddenly changed, or the High Court's estimate of it has suddenly changed. I would submit that the latter is the more probable. I may add that in one of these cases—a sensational trial for adultery, which had attracted much public interest—the reversal of my decision by Messrs. Amir Ali and Pratt created widespread dissatisfaction, and that the Amrita Bazar Patrika, the most influential of the native papers, thought it sufficient comment upon the matter to publish my judgment and that of the High Court side by side.

Further, I would point out the very difficult position in which the High Court, and especially the Criminal Bench, were placed by my suspension. They had recommended my suspension, but were not prepared to go on with it. Sir John Woodburn might very well say that it was they who had got him into the impasse in which he found himself, and that it was their business to get him out of it. A majority of the High Court having declined to proceed further in the matter of the alleged "contempt," there was no way left in which the Criminal Bench—the specially selected Judges—could get him out of it, except by taking some action in the main case, and thereby obviating the necessity of re-instating me, which, as Sir John Woodburn himself admits, would have been the "logical consequence of the removal of the suspension." There was, of course, no logical connection between the judgment and the "contempt"; but it was the case of making the best of a bad business. That Sir John Woodburn had arrived at some understanding upon the subject with Sir Francis Maclean appears from his own argument (in paragraph 10 of his letter) that at the time when I appealed to the Government of India "the Lieutenant-Governor was precluded from offering any further observations, as the Appeal Case was then in the hands of the High Court, from whom His Honour *expected to hear further in due course.* It is Sir John Woodburn, not I, who says the whole thing was prearranged; that he knew or had reason to expect what the High Court would do in a case which they had not yet heard.

But although the Honourable Mr. Amir Ali and the Honourable Mr. Pratt were, no doubt, ready enough to oblige Sir Francis Maclean and Sir John Woodburn, they were not ready to carry that complaisance so far as to injure their own interests. Number one, as the Bengalis say, is a very good number. And so those two learned Judges would not take up the case till they saw what reception His Lordship gave to my memorial of the 21st March, in which among other things the sycophancy of the High Court in general, and the illegalities of Sir Francis Maclean in particular, are set forth.

They had to pretend that they were very anxious to take up the case at once, for otherwise they would have had no excuse for their action in sending for the record. So, first, the printing was delayed, and then, that there

might be some record as to the cause of delay, the pleader for the accused was put forward to apply for an adjournment of the case over the Easter holidays. It was then sought to make it appear that the delay was not due to the High Court.

Sir John Woodburn, in paragraph 12 of his letter, insinuates that it was the pleader's fault the case was not taken up—at all events that the High Court would have taken it up in March, but for the pleader's application. When copies, he says, " *were delivered* to his pleader for the appellant, Sadak Ali, the Easter holidays were then about to commence, and on the application of the pleader, the Appeal case was postponed, and was taken up on the 10th April, when the Court re-opened after the holidays."

Here His Lordship finds a distinct allegation that when the pleader made his application, he already had the copies. The very reverse was the fact. The High Court took care he should not have the copies till the case had been postponed. The case was not even in the Ready List of the High Court.

The reason why Babu Surendra N. Guha went out of his way to make the application for postponement was, as Babu S. N. Guha has himself stated, that the Deputy-Registrar of the High Court sent for him, and told him the Judges wished him to make the application. They had fully made up their minds not to hear the case; if he had refused to apply for adjournment they would have said the paper book was not ready; but there was the subsidiary object to be attained of making it appear that the delay was not due to themselves. The copies were, no doubt, made over to the pleader on the 27th March, but they were made over after, and not before, he applied for and obtained an adjournment over the Easter holidays.

I may add that the accused's pleader did not require these printed copies; for manuscript copies had been made over to the accused *from my* Court, on the 28th February. The record was printed not for the convenience of the pleader, but for the convenience of the Court. If the Court had been really anxious to take up the case, they need not have had it printed; they could have taken it up on the 10th March instead of on the 10th April.

Among the voluminous papers which they have forwarded, the Government of India have not thought it fit to include a copy of the order passed on the pleader's application by the learned Judges. It was reproduced in the Amrita Bazar Patrika of the 29th March, a copy of which is Enclosure Z 7* (the order will be found on page 5). I would call special attention to the following passage:—

" The Sessions statement was placed before us on the 4th March. We then discovered that no reference was received before that date, as under the law the Sessions Judge was bound to do it (*sic*) and we made enquiries as to what had become of it. We then learned from the Registrar that the record had been brought down to Calcutta by the Sessions Judge."

So the learned Judges would make out that it was quite an accidental coincidence that the Sessions Statement " turned up again " just—" at that moment "—according to Sir John Woodburn.

They had seen my letter of 28th of February, informing Government that I was bringing the records to Calcutta, in order to make them over, yet they have to " enquire about it." They finally learn that it has been brought down, not from Government, but from " the Registrar." There is here a designed confusion between Mr. Chapman and Mr. Sheepshanks:—from the High Court's letter to Government of the 4th March, it is plain that Mr. Chapman is meant. Mr. Sheepshanks is there distinguished as the officiating Registrar. Mr. Sheepshanks, of course knew nothing about the custody of the record; Mr. Chapman knew because I had shown it to him when he came to get it for the Chief Justice. The letter of the 4th March, being written in a hurry, had not been worded with sufficient caution.

* Not printed.

"We were considering the advisability to institute proceedings for contempt for disobedience to our order, but it became unnecessary in view of the administrative order passed directing Mr. Pennell's suspension. On the 6th March the records were made over to the Registrar of the Court without any apology or explanation by that Officer."

This is again an attempt to cover up the real facts. The learned Judges are putting the cart before the horse. The proceedings for contempt became unnecessary (or as I should prefer to term it impossible), when I made over the records. The administrative order was passed at the instance of the High Court. As for apology or explanation, I had never been asked for any—the learned Judges are willing to talk at me, but not to talk to me.

"We gave immediate order for printing of the documents and the judgment in the case, but unfortunately owing to the great delay in receiving the records, we find that the paper book is not quite ready even yet, and we shall not therefore be able to take up the case before the holidays."

There had been ample time to print the paper book in the 21 days which had elapsed since I made over the record. The learned Judges may have immediately *ordered* the printing of the documents which implicated the Government, but if so they themselves prevented the immediate execution of their order, for in the first place they sent only the A file into office, and kept the Exhibit file (which contains the documents) in their own keeping.

Finally it appears that the paper book was not ready "even yet." The learned Judges can have taken but little trouble to have their orders carried out.

"We are extremely loth that in a case in which the accused has been sentenced to death to keep him in suspense in jail. But the delay which has taken place in this particular case has been owing to, we regret to say, circumstances to which we have referred."

In view of the facts which I have stated—when it is borne in mind that the learned Judges were themselves delaying the case in order that they might the better—

"Cypher the chances up and then jump off
Which side best paid expenses."

Can His Lordship conceive more sickening hypocrisy than this?

Can he retain upon the Bench either Sir Francis Maclean or those pliant tools of his? Is it my conduct on the Bench, or theirs, which has set the most pernicious example? Is it my continuance in the Service, or theirs, which would amount to a Public Scandal?

Not only was the application in the Noakhali murder case made at the instance of this Court, but so also was the application made immediately before in Mr. Reily's case, to postpone the hearing of the rule (obtained by Mr. Reily for a transfer of the case) for a substantive application to quash the proceedings.

The High Court, that is, actually suggested to Mr. Reily's Pleader, that Mr. Reily should apply to quash the proceedings, so as to avoid being tried at all!!

What, I would ask His Lordship, are the people of the country likely to think of such proceedings? What they did think, and what some, at least, of them have openly expressed, will be seen from the two leading articles in the "Bengalee" of April 1st (Enclosure Z 8)* in which Mr. Amir Ali is satirically complimented on his courtesy and considerate kindness to the Vakil Bar in anticipating their wishes! Nor was the indignation confined to the native community.

The "Bengal Times," a paper specially cited in Mr. Cotton's "New India," as exemplifying the anti-native bias of the English press, attacked the conduct of the High Court in two leading Articles (both reproduced in the "Amrita Bazar Patrika," of April 12th (Enclosure Z 9,* page 8) and observed that any one attempting to justify Sir Francis Maclean's conduct, or Messrs. Amir Ali and Pratt's conduct later, must possess an elastic conscience.

Lastly, I would allude to the fact known to all the Calcutta Bar, and noticed in the Press, that when I attended the hearing of the appeal on the

* Not printed.

11th and 12th of April, neither of the learned Judges was able to look me in the face. Mr. Justice Amir Ali several times attempted to be satirical, but no sooner did I fix my eyes upon him than the smile died out on his lips, his glance fell, and the power of speech appeared to desert him. Mr. Justice Pratt never, so far as I could see, raised his eyes from the table in front of him throughout the trial. The delivery of judgment was delayed till I had left Calcutta. It was not pronounced till the 17th April (Wednesday) although if it were not ready on the 15th (Monday) when I with scores of others attended to hear it, the learned Judges would certainly have had no time to complete it.

I must refer to yet one other fact extraneous to the judgment itself, but not without significance as to how that judgment came to be written. It is this, that on the Saturday after the trial, the 13th April (Saturday is a day on which the High Court does not sit) the learned Judges, Amir Ali and Pratt, with the record, were closeted with Sir Francis Maclean.

What reason can be imagined for this consultation? That a difficult point of law was involved. That Mr. Amir Ali and Mr. Pratt desired the benefit of the Chief Justice's advice on questions of fact, of his experience of the people and of the country? I would suggest that Mr. Amir Ali's consultation of Sir Francis Maclean was a parallel to Moulvie Zakir Husain's consultation of Mr. Twidell—that he wanted to know what master's wishes were. If His Lordship thinks any other explanation possible, I would suggest that he should call for it. That Mr. Amir Ali's judgment of 17th April was not his own unaided composition is apparent on the face of it; it is better English than the learned Judge can write by himself. For a specimen of his own composition I would refer His Lordship to the order he passed on the 27th March.

In view of the above facts, I submit that His Lordship should have little respect for the *authority* of the findings and criticisms which the two Governments now seek to use against me—that those findings and criticisms must derive such value as they possess from their own intrinsic merits, and not from the names impressed upon them—that they must be valued as metal, and not as current coin. For I submit that on the facts I have stated it is *a priori* probable that the two learned Judges in deciding these cases would fit their findings to their conclusions rather than their conclusions to their findings—that it had been arranged beforehand what their decisions should be, and that in writing their judgments all they did was to cast about for reasons to justify those decisions—to make out as good a case as possible for getting me out of the way. And if His Lordship accepts this view he can have no confidence whatever in the judgments —*as judgments*—for the very idea of a judgment presupposes that the Judge applies an unbiassed mind to the evidence and honestly tries to find out where the truth lies.

And with regard to the findings themselves I have one general submission to make to His Lordship; that even if it be thought that I am wrong, and the learned Judges right; if it be held that Sadak Ali, Aslam, and Anwar Ali did *not* commit the murder of which I (and I may add two independent assessors) found them guilty; that Mr. Reily did *not* commit the perjury and forgery for which I unsuccessfully attempted to bring him to trial; that even in that case, unless it be also held that I did not honestly believe in their guilt, or that my belief, though honest, was due to carelessness or undue haste, His Lordship should not hold me blameworthy. I will go further, and say that in my humble opinion not only should I owe no apology to His Lordship, but that I should owe none to Sadak Ali himself.

"What other should I say, than 'God so willed
Mankind is ignorant, a man am I:
Call ignorance my sorrow, not my sin!'
So and not otherwise, in after time,
If some acuter wit, fresh probing, sound
This multifarious mass of words and deeds
Deeper, and reach through guilt to innocence,
I shall face Guido's ghost nor blench a jot.
'God who set me to judge thee, meted out
So much of judging faculty, no more:
Ask him if I was slack in use thereof!'"

Now it is no one's case that I tried the accused carelessly. Amir Ali, J. (Pratt, J., concurring) is of opinion that it is a simple case (" the case is simple enough " are his words), but it is apparent on the face of my judgment that I thought the trial required special care and acted accordingly. At the very outset I stated my reasons for considering the case to be one of unusual importance; and as I pointed out, the actual hearing (including arguments) took sixteen working days, a view of the place of occurrence took four hours more, and the writing of the judgment occupied me nearly as long as the hearing. Pratt, J., actually complains of my " protracting the proceedings to a very unnecessary length," and goes so far as to accuse me of acting " dishonourably " in devoting so much of the time for which Government paid me to writing my judgment.

Nor have the learned Judges, or for that matter any one else, indicated any reasons for holding that my findings were dishonest—any indirect motive I had for believing, or professing to believe, in the guilt of the accused and of Mr. Reily, if they were not really guilty. (I also ordered the prosecution of certain other witnesses, but no one seems to have troubled himself about them—they were black men.) No doubt the learned Judges allege that I started on the trial with the settled idea that the accused were guilty and that I did not maintain a judicial balance of mind in respect of Mr. Reily; and the Government of India speak of my personal animus against the " victims " of my own original judgment. But the " malice " of which I am accused is implied, not express; the argument is that I must have had this malice because I thought the men guilty; that it was impossible for any unprejudiced person to arrive at my conclusions. I have already denied that I had any personal ill-will to Mr. Reily, and have shown how Mr. Reily himself admits that so long as I thought he was merely incompetent I went out of my way to shield him. I doubt if Mr. Reily himself would say I was actuated by malice in proceeding as I did against him. I am sure that most, if not all, of his friends do not say so. As for the accused in the murder case, I had never seen them or even heard their names till I read the depositions recorded by the Committing Magistrate, which I did upon the 5th January, the day before the trial commenced.

I would invite His Lordship's special attention to the way in which the learned Judges have distorted a particular passage of my judgment in order to make out that I had prejudged the case. " The preliminary enquiry," says Amir Ali, J., was held by Babu Kali Sankar Sen, Deputy Magistrate of Noakhali, and the accused were committed to the Sessions. The learned Session Judge, with reference to this part of the case, says as follows:

> " On the 15th of October, the A form was submitted and was made over to Babu Kali Sankar Sen, the Senior Deputy Magistrate, for disposal. On the 16th October, the examination of the witnesses for the prosecution commenced, and from that date, to use an expressive colloquialism, 'it has been all over but the shouting.' We are not sure if we actually apprehend the meaning of this colloquialism used in this connection in a judicial utterance. If it means that from that date the result was a foregone conclusion, then we must say it was a most unhappy expression, showing the bent of the Judge's mind and proving what the learned pleader for the accused contended, that he had approached the consideration of the case with his mind made up on the subject of the guilt of the accused."

And Pratt, J., whose judgment, so far as it deals with facts, is a mere precis of Mr. Amir Ali's, similarly observes:—

> " The conviction of the accused was almost a foregone conclusion, or to adopt the Judge's own language, 'It was all over but the shouting' directly the magistrate began to examine the witnesses."

The passage referred to is on page 97 of the Paper book [Appendix, page 223]. It occurs in the middle of a discussion as to the conduct of the Police in trying to keep the case out of court. And when read with the context, no one—not even an officer like Mr. Amir Ali, imperfectly acquainted with English—can doubt its meaning—that when the case came before the Magistrate it was all up with the Police, for whether or not it resulted in a conviction there could be no doubt as to the fact that they had suppressed evidence wholesale.

Further, I would point out that when I made use of this expression I had decided, after a careful and protracted trial, that the case was true. I used it not before but after the trial. A very little reflection must have shown the learned Judges that the construction which they have put upon the passage—that from the 16th October, I, or, indeed, the Deputy Magistrate, had made up my mind as to the guilt of the accused—was an *impossible* one. As I have already said, I never saw the papers of the case for months after. I knew, indeed, from conversation with Mr. Ezechiel that there *was* such a case, that he thought it might "break" Osman Ali, and that he was very angry with Mr. Reily for the latter's stupidity (as he thought it) in connection with the case; but I am by no means bound to accept Mr. Ezechiel's opinions; I am not usually charged with paying undue deference to the opinions of District Magistrates—rather the other way. I upset, or got the High Court to upset, several of Mr. Ezechiel's decisions. How I could know on the 16th October what I was likely to do in the case—still more what the Deputy Magistrate was likely to do in it—passes my comprehension. As for either of us having made up his mind as to the guilt of the accused, I would point out that five persons were sent up by the Police (under Mr. Ezechiel's orders) for trial, that Kali Sankar Babu discharged one, and that the assessors and I acquitted another. To use Mr. Pratt's phraseology "it ought to have been patent to any unprejudiced mind" that the passage complained of did *not* bear the construction put upon it; but the learned Judges have ingeniously separated it from its context in order to base upon it a charge of prejudging the case. And I would point out the unconscious admission by Mr. Amir Ali that if he had prejudged a case; if he were fitting the reasons to the decision, he would do his utmost to conceal the bent of his mind, and would consider any expression which revealed his real thoughts most unfortunate. I submit that if I had really prejudged the case; if I had really shown any animus against the accused, the persons who would be naturally most indignant at my unfairness would be not the Judges of the High Court, not the prosecutors, but the accused men's own lawyers. We find on the contrary that both the pleaders who defended these men, joined, after I was suspended, and when it was reasonably certain that I would never be their Judge again, in a resolution condemning my suspension, and that at the very time the High Court was condemning me for my unfairness to their clients, Babu Radha Kanta Aich, and Babu Rajani Kanta Bose were foremost in organizing a "public ovation" to me—that even in the High Court Babu S. N. Guha makes no secret of the fact that he was asked to apply for an adjournment, while Mr. P. M. Guha, who conducted the appeal, persistently declined to take the very broad hints thrown out to him by Amir Ali J. to attack me personally, and again and again, when that learned Judge rhetorically asked how this and that part of my judgment was relevant, pointed out what he supposed to be its relevancy, instead of saying, as the learned Judge wanted him to do, that it had none. I may also point out that the briefs of the defence pleaders have always been at the disposal of the popular organs which advocated my cause; the learned counsel apparently being of opinion that they owed no duty to any one but their client, and held no brief for the executive authorities or against me. If their own lawyers do not say I acted unfairly to these accused, how does it lie in the mouth of Government to do so? Of that Government which instituted their prosecution, which went through the farce of supporting their convictions by me before the High Court.

And I would further submit to His Lordship that this tenderness for the accused on the part of His Lordship's subordinate Governments will, in India, deceive no one; that it will be patent to everyone that I might have hanged black Sadak Ali, or fifty black Sadak Alis, if only I had abstained from prosecuting white Reily, as the schoolboy wrote.

> I am very very sorry to tell
> He refused to grant white Reily bail.

That was my offence, and not my conviction, of the accused. It was not for the sake of these accused, but for the sake of Mr. Reily, that the attempt to intimidate me was made, and that the High Court when, for reasons I will

afterwards state, they dared not acquit the principal murderer, found themselves reduced to the necessity of treating my proceedings as partly good and partly bad—good in that they enabled the Court to decide the innocency of two of the accused—bad in that they did not enable it to decide the guilt of the third.

Let me tell His Lordship that the zeal of His Lordship's subordinate Governments for conviction and for severity of punishment is notorious—that "no conviction, no promotion" was the avowed maxim of a late Lieutenant-Governor of Bengal; that I myself have suffered all my service because I am known to be an acquitting Judge; that I myself, as a subordinate Magistrate, have been called upon, even as the Native Deputy Magistrates are now being called upon, to explain my low percentage of convictions; that only two years ago, in Chupra, Mr. Justice Stevens called on me to explain the leniency of my sentences; that in this very case I thought it necessary to apologize for not sentencing all three of the accused to death.

The Judge whom His Lordship's subordinate Governments prefer, who has the best chance of their recommendation to the High Court—is the Judge who does not look too closely into the convictions of the subordinate Magistracy, who is himself satisfied with a low standard of proof, who shows the largest percentage of convictions and the greatest number of death sentences. Such a Judge, they consider, makes for "strong Government" which, in their opinion, is the panacea for all the ills that Indian flesh is heir to.

That very criminal Procedure Bill in connection with which I was so severely censured had for its main object to secure the greater efficiency of the courts, not as Courts of Justice, but as conviction machines. The executive authorities look upon the administration of criminal justice as a means of keeping the people down; it is for that very reason they are so loth it should be taken out of their hands. Their view of the law is the view of Mr. Justice Barkeley in the Shipmoney case;

> "The law is itself an old and trusty servant of the King's; it is the instrument or means which he useth to govern his people by. I never read nor heard that lex was rex, but it is common and most true that rex is lex."

The two Governments profess to be aghast at the strictures passed by the High Court (at their own instance) on my conduct.

"No more severe remarks," says that dispassionate critic, Sir John Woodburn, "could be made by an Appellate Court than that the principal accused had not had a fair trial in the Court below, and that the Judge did not bring to the trial a calm and dispassionate mind."

He has read these remarks, he says, with care and concern. Lord Curzon and his Council effect equal abhorrence.—

> "We have never read and we cannot imagine, a more severe or uncompromising condemnation of the conduct of a Judge, both in the treatment of the judicial and of the general aspects of the case before him, than was passed upon Mr. Pennell on this occasion; and we desire to express to your Lordship our opinion that his conduct entirely merited the censure which the Judges of the High Court thought fit to apply to it."

I think it necessary to point out to His Lordship that, so far as this indignation is inspired by any sympathy for the accused, or by any other feeling than "that pity which some people self-pity call," and which, as the poet remarks—

> "Is sure the most harrowing pity of all,"

it is purely fictitious.

If the Governments felt such sympathy for the sorrows of persons unfairly tried and unjustly condemned, they would feel it not only for the "victims" of the Noakhali case, but for other similar "victims."

On the contrary, we find that Appellate Courts, both High Courts and those of Sessions Judges, are constantly pointing out the injustices perpetrated by the Courts of first instance—not unfrequently attended by every

indication not of *implied* but of *express* malice—without those Governments taking the slightest notice of their comments. The "strong executive" officers who most frequently incur such condemnation are, on the contrary, the special favourites of those Governments.

His Lordship has seen what notice has been taken of my comments on the conduct of Mr. Twidell and Moulvie Zakir Husain, in the Chupra case. It may be said I am only a Sessions Judge—but surely it is the truth of the comments which is important, not the position of the person making them. It may be as well, however, that I should make it clear that the strongest comments even of the High Courts will not result in any action whatever on the part of the Executive, unless those comments fall in with the Executive's own inclinations. For this purpose I would refer His Lordship to the case of Empress *v.* Har Govind Singh, reported in I. L. R. 14 All., 242, and cited by me (for another purpose) in my judgment in the Noakhali case (vide High Court Paper book, Part I., page 99 [Appendix, page 224]). The Allahabad High Court, presided over by Sir John Edge, observed in that case that the Sessions Judge had not only censured the committing Magistrate for omitting to break the law by forcing the accused to disclose their defence, but had made that omission a pretext for procedure which, in their experience, was unprecedented in modern times in any part of Her Majesty's Dominions, and was entirely illegal; that he had put up the Government Pleader to present a petition to make the defence witnesses witnesses for the Crown, and had falsified his record and judgment with a view to make it appear that the Government Pleader had acted independently of him; that the object of this petition was to reverse the order of a criminal trial, and to place the accused men at a disadvantage by having their witnesses called, and all that they could say disclosed before the evidence of the prosecution was taken; that by this course the witnesses for the Crown would be put upon their guard, and any cross-examination which could be administered to them would be practically futile. "Such a course," they say, "would be the last which any sane man, who hoped to ascertain the truth, and had not already made up his mind that the accused were guilty, and that nothing was to be said or believed in their defence, would adopt. And yet that course, but in another form, was adopted by the Sessions Judge." They proceed to find that before even the first witness for the Crown had been fully examined, the Sessions Judge—

> "Administered an illegal and inquisitorial cross-examination to the prisoners, picketed all the witnesses available for the defence in twos in the custody of policemen, and began the examination of each defence witness by what must have seemed to them a threat of transportation for life, if they should say in their evidence that it was Amir Singh and not the prisoners who had murdered Sambhal Singh; and yet the issue which the Sessions Judge had to try was, did the prisoners, or some or one of them, murder Sambhal Singh, and at that period of the trial the only direct evidence which had been given connecting the prisoners, or any of them with the murder, had been the evidence of Amir Singh, who himself was accused by the defence of the murder, whose evidence in chief had not been concluded, and who had not then been submitted to cross-examination. . . , The Sessions Judge committed nearly every conceivable irregularity in aid of the prosecution, short of sentencing the prisoners to death without a trial. . . . The opinion of the assessors was delivered late on the afternoon of the 21st January 1892, and before 5.20 p.m. of that day the Sessions Judge had passed sentence of death upon each of the four appellants."

The Court proceed to find that the Judge wrote his judgment not before, but after passing sentence, and falsely dated it 21st January to conceal that fact (much as Mr. Reily put a false date to Exhibit A).

The judgment is on record in the printed reports of the Allahabad High Court, and is to be found in every law library in India. I do not believe, however, that there was ever any "Nicholls" case, or that the exigencies of the service were found to require the transfer of Mr. G. J. Nicholls, the Sessions Judge, who had tried the case, from the popular station of Benares. Sir John Edge, the Chief Justice who pronounced these judicial censures upon Mr. Nicholls, is now, I understand, a member of His Lordship's Council; he will be able to tell His Lordship what notice the Government of the North West Provinces or the Government of India took of his utterances. The popular impression at all events is that they took none, and that they were not likely to take any action against a Judge who had proved himself such a bulwark of "strong Government." And yet the fact that in this case the

judicial censures were clearly spontaneous should, it might be said, have given them the greater weight.

In view of facts like these, which might be indefinitely multiplied, I will ask His Lordship to believe that the indignation of the Executive authorities, so far as it professes to be based upon my injustice to the accused, is a simulated indignation. I am quite prepared to admit that their indignation is perfectly genuine, so far as it proceeds from the exposure which I have made of themselves.

I submit that I have established that there is no good ground for charging me with either carelessness or indirect motives in connection with this case, and that, therefore, even if it be held that my judgment is wrong, and that the judgment of the Appellate Court is right, I am not blameworthy. But I am prepared to go a great deal further than this—for I think I can satisfy His Lordship that my judgment was *right*, and that of the learned Judges Amir Ali and Pratt wrong.

In the majority of cases it would be difficult or impossible for me to do this. In this case my task is rendered easier by the fact that the judgment of Messrs. Amir Ali and Pratt was not final—that they directed a re-trial; that in this re-trial the same questions of fact on which the learned Judges and myself had differed were submitted to a third tribunal, selected not by me, but by Sir John Woodburn; that in every case in which the High Court differed from me Mr. Geidt upheld my views; finally, that Mr. Reily, who was again examined at the second trial, went back upon his former evidence, and thereby practically admitted the incorrectness at all events of the statements for making which I directed his prosecution.

Judgment was delivered by Mr. Geidt on the 18th May, and I understand that a copy was at once sent under his direction to the Chief Secretary to the Bengal Government at Darjeeling.

There was time for the Government of India to have got a copy before their letter of the 30th May was despatched, but they have not thought it desirable to place a copy before His Lordship. They have preferred to dismiss the subject, with the summary remark—"the re-trial has since taken place, and Sadak Ali has been sentenced to transportation for life." Apparently they make use of Mr. Geidt's decision, only to point out to my excessive severity in passing the death sentence.

The Government of India must have been perfectly well aware of the nature of Mr. Geidt's judgment long before the despatch of the 30th May was issued; for they must have received by the 22nd May at latest the "Bengalee" of the 20th May, which contains a telegraphic summary of it.

"THE BENGALEE."

Monday, May 20th, 1901.

Indian Telegrams.

THE NOAKHALI MURDER CASE.

SADAK ALI TRANSPORTED FOR LIFE.

(*From our own Correspondent.*)

NOAKHALI, MAY, 18th.

Judgment was delivered at 1 p.m. to-day. Sadak Ali has been convicted of murder, and sentenced to transportation for life. Further particulars follow. The Courtroom was crammed with hundreds of eager spectators.

(Later.)

The judgment in the Sadak Ali case is a lengthy one, coming to fifty-seven pages. The Judge regards Torab, Hossein, and Islam's evidence as truthful, corroborated by strong circumstantial evidence of the ferrymen, Mohabat Ali, Asraff Ali, and Idris. The Judge and the Assessors believe that Sadak Ali was assisted by others. The Judge believes the surothal produced in the re-trial by Osman Ali to be forged, but considers Osman Ali's and Krishna Bhadra's prosecution as premature, leaving the matter to the Enquiry Commission. The Government Pleader requested to prosecute them if the Commissioners

find them guilty. The Judge believes that Hossein and Torab deposed before Osman Ali, though he suppressed their depositions. He thinks the evidence of the eye-witness recorded by Mr. Reily as substantially the same as given in the Court, though the Police, as compared with the Judicial and the Magisterial officers, are not practised in rendering deposition accurately, nor do they care doing so. The Judge accounts for the difference between the estimate of the Engineer and Mr. Reily as to the size of the break by the fact that when Mr. Reily came on the 15th September it was drier than in August. The capital sentence was not passed, as Mr. Geidt was not sure who struck the fatal blow, and as the accused was previously sentenced to death and reprieved.

That the executive authorities were by no means pleased at being deprived of the chance of feigning ignorance of its purport may, I think, be gauged from the fact, which I learn from a Noakhali correspondent, that Babu Syam Chand Dhur, the native gentleman on his promotion who has been sent to Noakhali in Mr. Geidt's place to make matters straight, has been taking inquisitorial proceedings in his Office, with a view to ascertain how the news got into the papers so early. And yet I may inform His Lordship that under the law a judgment once delivered is as much public property in India as it is in England.

I would point out that even if the Government of India had not Mr. Geidt's judgment before them when their letter of 30th May was despatched, they have had plenty of time to send His Lordship a copy since. I presume, however, that in that case His Lordship would have so informed me, either when sending me their letter on the 29th June, or subsequently. So, as I have not been informed of His Lordship's receipt of a copy, I may, I think, assume that the Government of India have not thought fit to send him any.

I, however, am desirous that His Lordship should be placed in possession of all the facts, and not only of such facts as the Government of India think good for him. And I would point out that they are interested parties, and that they should not have assumed that His Lordship would give no weight to Mr. Geidt's judgment, merely because it goes against them. I submit that they should not have withheld it from His Lordship, but left His Lordship to form his own opinion as to what weight he would attach to it.

The judgment has been printed in several papers—among others in the "Amrita Bazar Patrika" of May 30th, a copy of which is annexed (Enclosure Z 10).* And on reference to it His Lordship will at once see why the Government of India has withheld it from him; for that the specially selected Judge has played the part of Balaam, and that two more assessors have had the impudence to differ from the learned Judges of the High Court, and to agree with him, and with my humble self.

His Lordship will further find that every argument put forward by Amir Ali and Pratt, J.J., for discrediting my judgment is taken up, examined, and finally rejected by this very senior Judge—who had Government so completely in his hands, in consequence of the promises held out to him before he delivered the judgment—even a High Court Judgeship had been dangled before his eyes—that they have been obliged notwithstanding the judgment to give him special promotion out of his turn to the new first grade of Sessions Judges, and to appoint him to the coveted post of Legal Remembrancer.

I would request His Lordship first to read my judgment, then that of Amir Ali and Pratt, J.J., then that of Mr. Geidt. After he has done so, I think that his respect for justice as it is administered in some Indian High Courts will be somewhat rudely shaken. I would only point out that in 99 cases out of a hundred High Court Judges can do what Amir Ali and Pratt, J.J., have done, without the slightest chance of being found out—for, in criminal cases, there is no appeal from their decisions, and hardly any one who is not personally interested in the case is likely to read the evidence for himself.

But in order to assist His Lordship I may be allowed to give a brief summary of some of the salient features of the case. His Lordship will please bear in mind, that it *is* a summary, and necessarily far from exhaustive.

The case against the three accused whom I convicted rested in the main upon the evidence of three eye witnesses, Hosain, Torap, and Islam. It was

* Not printed.

possible to believe Islam without disbelieving Mr. Reily. It was *not* possible to believe Hosain and Torap if Mr. Reily were believed; for, in several points of cardinal importance they flatly contradicted him.

Not only I myself, but the two assessors believed Hosain and Torap. That the assessors believed these two witnesses is clear from the fact of their finding the accused Anwar Ali guilty; for Hosain and Torap are the only witnesses incriminating Anwar Ali, who is not even mentioned by the remaining witness, Islam. Now, the High Court in remanding Sadak Ali for retrial gave the Lower Court a mandate to believe Islam, but to disbelieve Hosain and Torap. "After carefully and anxiously weighing the evidence of Hosain and Torap," says Amir Ali, J., "we have been forced to the conclusion that it is utterly unreliable." Pratt J. adds:—

"The Judge did not bring to the trial a calm and dispassionate mind. He approached the case with preconceived ideas, readily accepting as true whatever evidence was adduced against the accused, and thus failed to discover or admit what ought to have been patent to any unprejudiced mind, viz., that Hosain Ali and Torap Ali were false witnesses."

The reason why Hosain and Torap had to be discredited was that if they were believed, it could not be denied that Mr. Reily had in my court committed perjury; and as I wrote to the Government Pleader at the time of retrial. "Of course we all know that Reily lied,—but for political reasons the Executive are bent on making out he did not."

The "control" of the High Court was in the hands of people who would not accept the conclusion that the white Policeman should be punished, could not deny the major premise, that white Policemen, who commit perjury, should be punished, and were, therefore, forced to deny the minor premise, that this particular white Policeman had committed perjury.

But when the case came to be tried, and the same witnesses to be examined, what do we find? What does Mr. Geidt say?

"Before the trial commenced I addressed the assessors, and exhorted them to banish from their minds all that they had heard of the previous proceedings, whether in this Court, or in the High Court, all that they had heard or read elsewhere, and to bring an open mind to the consideration of this case, which they were to decide on the evidence that was to be presented to them, and on that alone.

"After a trial, which including arguments, extended over nine days, both assessors gave their opinion that the accused was guilty."

But this by itself would not carry us far. The High Court meant that the man should be found guilty; only they intended that he should be convicted on the evidence of Islam alone.

Mr. Geidt proceeded to ask the assessors whether they believed Torap and Hosain. He has not recorded his question, but he has recorded their answers.

Babu Mohendra Chandra Some: "I believe the witnesses Torap and Hosain."

Babu Gopal Chandra Dutt: "I also believe Hosain, an old man."

Mr. Geidt devotes the greater part of his judgment to a consideration of the question whether these two witnesses should be believed, and takes up and examines, one by one, the reasons which Amir Ali, J., has set forth for disbelieving them. He concludes as follows:—

"I have now analysed at length, it may be thought at undue length, the reasons for believing or disbelieving the two important witnesses Hosain Ali and Torap Ali . . . .

"In my opinion Hosain Ali and Torap Ali were substantially speaking the truth.

The authorities who selected him are stopped from denying that Mr. Geidt is indeed a learned Judge, and I, like Portia, are content to style him a very Daniel come to judgment. I would only remark that besides being an Officer of 25 years service, Mr. Geidt was for a long time Judge of Comilla (Tipperah) which is the next District to Noakhali, and to which indeed Noakhali previously belonged, so that he has not only experience but local knowledge.

I need not refer in detail to the grounds given by Mr. Geidt for believing these witnesses. I would only point out that more than half of Mr. Amir Ali's judgment is taken up by an attempt to refute their testimony, and that all the dishonest arguments of that learned Judge—for the dishonesty of those arguments, *e.g.*, the arguments that the witnesses would not go to a hut 3 or 4 miles off—that they would have taken more pains than they did to tell others what they had seen of the murder, and the like, is palpable to any one who knows the country though not, of course, to the British public—are conclusively refuted by Mr. Geidt.

But the main point which I wish to make is this. These two witnesses were believed by Mr. Geidt; they were believed by Kali Sankar Babu, a senior Deputy Magistrate. They were believed by the assessors who sat with me, one the Head Master of the Government School, and the other a local landowner.

The opinion of the assessors could not have been affected by my judgment, for it was given before I began writing my judgment, or introducing the "irrelevant" Exhibits. The witnesses were believed by Mr. Geidt, and by two fresh assessors whom he selected. Babu Kali Sankar Sen, Mr. Geidt, and the two sets of assessors had the advantage—not enjoyed by the learned Judges of the High Court—of having the witnesses before them. No one, however, says that Mr. Ezechiel, that Babu Kali Sankar Sen, that Mr. Geidt, that the four assessors are prejudiced persons, or proposes that they should be punished because (it may be in error) they believed these witnesses—but because *I* believed them or professed to believe them, it is held to be a necessary conclusion that I approached the case with preconceived ideas, and it is proposed that I should be turned out into the streets to starve.

I now come to the case of Mr. Reily; the Lieutenant-Governor states in his letter, No. 123, A.-D. (paragraph 14) that the High Court *acquitted* Mr. Reily—nor is this distortion of facts pointed out by the Government of India.

The High Court did not, and could not, *acquit* Mr. Reily—what they did was to give him a certificate of character and decide that he should not be *tried*.

If he had been tried the decision would have lain, not with a Mahometan gentleman like Mr. Amir Ali, but with a jury of Mr. Reily's countrymen.

Englishmen in India are not tried by people like Mr. Amir Ali; and an attempt to introduce such a mode of trial some twenty years ago was nearly producing a revolt; the English community very clearly indicating that the plan of making over the trial of accused persons to Magistrates and Judges who were mere tools of the executive might be very well for natives, but that it would be a bad look-out for any one who tried it on with them.

Now, no one has ever accused European Juries in India of an undue readiness to convict their own countrymen on native evidence, and the greater part at least of the evidence against Mr. Reily would have been native evidence. But Mr. Reily and Mr. Reily's friends thought it would be better not to submit him to the arbitrament of a British jury; they preferred a certificate of character from a native Judge.

And to show how this conduct is regarded by some at least of Mr. Reily's countrymen, I would solicit a reference to an article "What is Honour?" in the "Bengal Times," which, with two other articles from the same journal bearing upon Mr. Reily's case, is reprinted in the "Bengalee" of May 10th:—

"To ape virtue" begins the article, "is cheap, and so is an affectation of justice, whether in a superior or in an inferior Court. Parody is not a difficult art, and sometimes affectation of justice is exceedingly pathetic, sufficiently so to deceive many. But to our text. One hears much talk of British truth, justice, manliness, and honour. Heaven forbid that anyone should deny their existence in any person claiming to be, if not a Briton, at least a Britisher, but what is our manner of convincing our fellow Indian subjects that we love and cherish these virtues? Has Sir Francis Maclean done so by trying to intimidate his subordinate, a Sessions Judge, into committing an illegal act in Mr. Reily's case? Has our Local Government done so by its palpably unjust treatment *re*

Mr. Pennell's judgment and transfer? Have our High Court Judges done so by their ill-concealed eagerness to help our Local Government out of a dilemma, by agreeing to acquit a man of an offence for which he has never been tried? Has this same *man* (?) given any proof of his good faith and honesty, his love of truth, and his respect for justice, by his frantic efforts to *evade* a fair trial, an ordeal every honest, honourable man would seek with might and main, never feeling satisfied until he had obtained it? . . . We say to our shame, and with a sense of degradation, that we belong to a nation capable of such conduct."

And I would also refer His Lordship to the article on "Mr. Reily's acquittal," which immediately follows, and which shows that others of his countrymen even then shared my conviction of Mr. Reily's guilt.

But the point to which I would specially invite His Lordship's attention is this—that in the trial before Mr. Geidt, Mr. Reily told the truth—that he went back upon the evidence he had given in my Court, and admitted the very facts which he had then denied.

I would point out to His Lordship that after the decision of the High Court Mr. Reily was safe from any prosecution for what he had said before me—but that if he had again told lies before Mr. Geidt, it would have been open to this latter Judge to renew his prosecution; and in paragraph 10 of my letter to the Government Pleader, I had suggested that if Mr. Reily stuck to the lies he had told me, the Government Pleader should apply to Mr. Geidt to do so.

It will thus be seen that Mr. Reily had not the same motives for persevering in his perjury as a man who has once told a lie on oath usually has! And His Lordship will find that he did not so persevere.

I have not got a copy of Mr. Reily's evidence at the retrial, but I presume that its effect is fairly stated in Mr. Geidt's judgment, especially as I am advised from Noakhali that Mr. Reily *did* change his evidence in the manner indicated, and that, indeed, this was the only reason why the Government Pleader did not think it necessary to avail himself of some of the suggestions for Mr. Reily's cross-examination which, in my letter to him, I put forward on the supposition that Mr. Reily would adhere to his former evidence.

"The map (E x A a)," says Mr. Geidt, "prepared by the Court Head Constable, under the District Superintendent's direction and supervision, shows two roads west of Ismail Jagirdar's *bari*, by which the witnesses might possibly have gone to Bellew Sahib's Hat. The most westerly of these roads, marked Guna Mir's road, would afford the witnesses by far the shortest journey to that Hat.

The District Board Sub-Overseer who prepared the map (Exhibit V), deposes that this so-called road, shown on the Police map as being for the most part as broad as any of the main district roads, is merely a footpath nearly on the level of the paddy fields through which it runs, and that it would, in his opinion, be under water in the rains.

The public prosecutor points to the delineation of these roads on the map as another instance of the efforts on the part of the Police to discredit the evidence for the prosecution, though he does not accuse the District Superintendent of being a party to this deception.

Mr. Reily's evidence is to the effect that *he did not go over the roads shown in the map*, and that he left it to the Court Head Constable to delineate the features which he himself did not see, and that this Guna Mir's road was not visited by him."

Mr. Geidt goes on to say that the break Mr. Reily speaks of in his evidence on Ashak Jemadar's road could not have been the big break which made that road impassable, but was probably a much smaller break nearer to the murdered man's house.

I beg to point out to His Lordship that this is just what I said in my judgment. Mr. Reily now admits that he did not go over these roads, and cannot personally vouch for the accuracy of the Police Map, but in my Court

he would not admit this; he would have it that he had been over the roads *himself;* that he was with the Court Head Constable the whole time; that even though the plan was in the handwriting of the latter the whole of it was prepared "*in his presence,*" and under his personal supervision, and that he could swear from his own knowledge of the locality that it was correct.

From the neighbourhood of the murdered man's house to the place where it joins the main (Ichakhali) road there are these breaks on Ashak Jemadar's road; but one of them—the furthest—is beyond all comparison the biggest; when, therefore, Mr. Reily persisted in swearing he had been all along this road, and that he only remembered one break, though there might be others, the natural inference is that he meant the big one. He now, apparently, admits—as I held in the former trial—that he never got beyond the vicinity of the murdered man's house, and so only saw the nearest and smallest break.

But he would not say this before me; on the contrary, he betrayed his real ignorance of the locality by first saying that the break was the size of a small table in front of him, and then admitting that he was not prepared to swear that it was not twenty yards long. I can myself assure His Lordship that it is a huge break, and that no one who had ever seen it could possibly describe it as Mr. Reily did; the fact now comes out that he did not see it; was describing it simply from his imagination; and is unable, therefore, to swear whether it is 5 feet long or 20 yards long, whether it is $1\frac{1}{2}$ feet broad or 9 feet broad. Before me he spoke of riding past it, whereas Mr. Geidt remarks—

"The full depths extended right across the road, with ditches still deeper on either side;" (See evidence of District Engineer.)

In this case Mr. Reily was sent out to do the work himself, because the District Magistrate did not trust his subordinates. I found that, as a matter of fact, he did not do the work himself, but left it to the very subordinates whom his superior officer distrusted. Mr. Reily had, in his Diaries, represented that he had done the work himself. Mr. Bignell had just been blaming him for trusting his subordinates, and Mr. Ezechiel, to whom he had represented that he had done the work himself, was in Noakhali, and was seeing and having long talks with me every day.

The result was, that Mr. Reily, when examined before me, tried to make out that he had really done the work himself as represented in his Diaries, and thereby was obliged to adopt the lies put forward by his subordinates. The fact being that he was too great a coward to tell the truth, which was that he had left everything to the very subordinates whom his superior officer distrusted, and that the Diaries describing his own proceedings had been composed not by himself but by his Head Clerk, who was in league with those very subordinates.

As Mr. Reily now admits the very things which I said against him, I think it rather hard that I should be turned out of the service for saying them, especially when he is reinstated and sent to a better district. I am not at all anxious that any punishment should be inflicted upon Mr. Reily, who is a harmless person enough, and only told lies in self defence, but the Government seem to think they must make up for their leniency to him by severity to me. As the "Amrita Bazar Patrika" says, it is a case of "holding the equilibrium."

And if in any part of my judgment I have laid myself open to the charge of exceeding the legitimate limits of criticism in my observations on Mr. Reily's conduct, I would point out that there are usually considered to be certain limits to what a man should do in self defence, and that Mr. Reily's conduct showed a complete disregard for the interests of anyone but himself.

He not only told a number of lies as to his own proceedings, and committed an "error of judgment" in tampering with one of two duplicate maps, the other of which was out of his reach, but he wantonly accused the murdered man's widow of unchastity merely on account of her son's troublesome persistence in seeking for redress against the murderers.

His Lordship should also bear in mind the extreme peril into which Mr. Reily's conduct brought the two witnesses, Torap and Hosain, who so flatly contradicted him. Had I taken the same view of their evidence as Amir Ali and Pratt, J.J., professed to have done—that they were false witnesses—I should have had to direct their prosecution for committing perjury with intent to procure a conviction for murder, which, in Indian law, is an offence of far greater gravity than ordinary perjury; and the consequence might have been that these two poor peasants, whose only crime was that they had told the truth, when the interests of Mr. Reily and his Police required its suppression, might have been condemned to transportation for life.

Before proceeding to deal with the few remaining charges, I think it advisable to notice some of the more glaring misrepresentations contained in Mr. Amir Ali's judgment. I do this not only in my own interest, but in that of the administration of justice. It is not often one gets such a chance of exposing a dishonest High Court Judge as this case gives me.

The judgment no doubt is professedly that of Mr. Pratt as well, but His Lordship will observe that Mr. Pratt throughout these proceedings played a very secondary part. He did little but cast a silent vote for Government; and he was selected for this trial for the very same reason that brought about his elevation to the High Court Bench—that he is regarded as a "safe" man from the executive point of view. With Mr. Amir Ali the case is different. He has given me credit in his judgment for ability, and I may be allowed to return the compliment. I do not mean that the gentleman has any ability as a lawyer, or that he ever had or was ever likely to have any practice at the Bar; but he has had always the luck to jump in his judgment with the present way of the times whatever it was, and his chance has been to get thereby. The fact that he is an Indian, and a professing Mahomedan, makes him both more useful to the Executive authorities, and more dangerous to the community. His judgment in this case, whether it be his own work or that of others, is as clever and unscrupulous a piece of special pleading as Lord Curzon's Resolution in the Chupra case.

To begin with the maps. There were three plans filed before me; one (Exhibit V.) prepared by the District Engineer and his Sub-Overseer, under Mr. Ezechiel's orders, another (Exhibit A.) prepared by the Court Head Constable, and signed by Mr. Reily, and a third (Exhibit A a) the office copy of the Police map, which Mr. Reily produced at the last moment. Now, Exhibit V. was prepared *after* Exhibit A. (the Police Map). Mr. Ezechiel ordered its preparation because the prosecution questioned the accuracy of the Police map; he ordered the District Engineer to make, not a general map of the locality, but a plan of the *roads*, in order to test the argument set up by the Police that Torap and Husain could not have come by the way they alleged.

Exhibit A. (the Police map) is, as a matter of fact, full of inaccuracies, all made with the same object, that of throwing dust in the eyes of the Court; and in the Reily case the learned Judges had before them a general plan of the locality, subsequently prepared by the District Engineer himself under my orders, which showed the true state of the locality, and also the state of the locality as falsely represented in the Police map.

Now, Mr. Reily, knowing really nothing of the locality, was obliged to admit, when shown Exhibit V., that he could not make out anything from it at all. I adverted to this in my judgment as a proof that he really knew little about the locality, and had been trying to get it up from the Police plans; and stated that "having been over nearly the whole place (and a great many parts not shown) with this plan in my hand I can say (and I am an old Settlement Officer, and accustomed to plans) that it has been prepared with very creditable accuracy."

In the Order Sheet (High Court Paper book, Part I., page 6 [Appendix, page 169]) His Lordship will find the following statements as to my proceedings at the place of occurrence:—

"12. The 19th January, 1901.— . . . . . On the accused being called on for their defence, Babu R. K. Aich, their pleader, put in an application for a view of the place of

occurrence by the Judge and Assessors, and was heard in support of it. As the place of occurrence is near the town, I think such a view desirable. It is arranged that Babu R. K. Aich shall provide the Assessors and the Government Pleader with a gari or garis, and come with them to my house at 7.30 a.m. to-morrow. The Translator of this Court will also attend. We will then go to the various places mentioned in the course of the trial, and return thence to Noakhali."

"13. The 21st January, 1901.—Yesterday I visited the place of occurrence with the Assessors, and we saw all the more important places, being engaged therein a good three hours (apart from journey to and fro)."

It will be seen that it was, or should have been, known to the learned Judges that I asserted that I had personally tested Exhibit V. And if Exhibit V. is true, an instant's *comparison* will show that the Police plans are, to put it mildly, incorrect.

Yet what does Amir Ali J. (Pratt, J., concurring) say (page 2* of his judgment):—

"Even Exhibit V. prepared by the Sub-Overseer is imperfect. It represents the *locale* only partially, and does not give all the houses along the road; nor does it depict the roads leading from the town Noakhali to the village of Chur Uria. In spite of the allegation of perjury and forgery against Mr. Reily there is nothing to show that the delineation of the place, apart from the condition of Asak Jemadar's road, is incorrect; and we, therefore, proceed to deal with this case upon the basis of the draft map prepared by Mohim Chunder."

As Exhibit V. was prepared with a special object, viz., to show the alternative roads Torap and Hosain could have gone, there was no need to give all the houses along the road. For the same reason it was not necessary to depict the roads leading from Noakhali to Chur Uria, except from the point at which the different alternative routes diverged. There was no need to show the road from Bellew Sahib's Hat for the 2 or 3 miles that the witnesses must have traversed in any case, whichever route they chose afterwards.

The fact that Exhibit V. does not show certain things which were unnecessary to be shown for the purpose for which it was made is no proof that the features of the *locale* which it *does* show are incorrect. I state that I have myself tested it with the *locale*, and found that it has been prepared "with very creditable accuracy." And if this plan is correct *as far as it goes*, a mere *comparison* of it with the draft map prepared by Mohim Chunder (Exhibit A a) will show that the delineation of the place in this latter is *incorrect*.

Yet Amir Ali J. (Pratt J. concurring) proceeds to deal with the case on the basis of this *incorrect* Police plan, which had been questioned by Mr. Ezechiel even in the Deputy Magistrate's Court; and later on they use it for the very purpose for which Mr. Ezechiel had Exhibit V. prepared, viz., "to consider the evidence of Hosain and Torap, the principal eye-witnesses in the case."

"In order to understand their evidence," say these learned Judges, "it is necessary to keep in mind the *excellent* map prepared by the Head Constable, Mohim Chunder Mazumdar, regarding which we have already expressed our opinion" (page 7 of High Court's judgment [Appendix, page 351]).

Nor, in the Reily case, when they had before them the District Engineer's Map, showing at a glance the true and the false state of things, did they think it necessary to modify their opinion, or to express regret for their mistake, if it were a mistake, and not a wilful misrepresentation.

It is sufficient to point out that at the retrial the defence did not even venture to put the man (Mohim Chunder Mazumdar) who had prepared this "excellent Map" into the box; that the correctness of the Map was disavowed by Mr. Reily, its nominal author; and that the only use which the Court made of it was to discredit the Police.

So much for the excellent Map.

But Amir Ali J. (Pratt J. concurring) goes further than this—although he has never been within a hundred miles of the place he thinks (or professes to think) that the evidence justifies the conclusion that the break would not deter the witnesses from going that road. (*All* the evidence I may say is the

* *Vide* page 348.

other way.) And he even ventures on so deliberate a misrepresentation as this:—

"It is a noticeable circumstance in this case that the witness Ismail or Islam, upon whom the Sessions Judge has relied, does not appear to have considered that break so formidable as to have been deterred by it, as we shall see later on, from going home that way."

Mr. Reily had said the break was insignificant—so Amir Ali J. must say it was insignificant—and so he must represent Islam, a witness relied upon by me "as going home that way."

Now, as pointed out by me in paragraph 2 of my letter to the Government Pleader, no one had even suggested that Islam went home that way; "Mr. Amir Ali's statement that he went home that way is altogether unsupported by the evidence. It is almost physically impossible that he should have done so."

I would now ask His Lordship to turn to Mr. Geidt's judgment:—

"The District Engineer was, during the course of the trial, sent to plot on his map the paths leading to Islam's house and his deposition on his return shews that the way through Abdul Aziz's bari would be the shortest for Islam to take on his way home, and that by this route he would also avoid the big break at Ashak Jemadar's road.

So, thanks to Mr. Geidt, another misrepresentation of Amir Ali J. (Pratt J. concurring) is nailed to the counter.

What, again, can His Lordship think of the observation. "The trial continued up to the 25th of January, when "a few more words from Babu R. K. Aich, for the accused, were heard."

What is the point of that citation? Is it not an attempt to insinuate that I cut the defence pleader short? And would it not have been fairer for the learned Judge to mention the fact, which he must have known from the order sheet, that "the pleader for the defence" (*i.e.*, Babu R. K. Aich) had been addressing the Court the whole of the previous day? Does Babu R. K. Aich allege, has any one ever alleged, on behalf of the accused that the defence in my court was not allowed every reasonable latitude? And if Amir Ali J. does not mean the contrary, what *does* he mean by extracting that passage from the order sheet? The expression was natural enough. Babu R. K. Aich had *closed* his address on the 24th, and the case was adjourned only for the address of the Government Pleader, but on the 25th Babu R. K. Aich said there were one or two things he had forgotten to urge, and was heard for 5, or perhaps 10, minutes longer. He had been heard for 5 or 6 hours the day before.

Pratt J. complains of my protracting the trial to a very unnecessary length. The High Court took 3 days to hear the appeal, and several days more to write their judgment. Mr. Geidt only had one man to try, and the case had, to a considerable extent, been thrashed out before me; in particular, the defence abandoned several witnesses, and owing, in the main, to the change in the nature of Mr. Reily's evidence, but partly also to the fact that English knowing assessors were selected, Mr. Reily's examination, instead of taking 4 days, as it did in my Court (one day being devoted to translating his evidence) took less than a day. Still with all this the actual hearing took Mr. Geidt 9 days, and writing the judgment took him 3 days longer, nor had he attacks of illness such as I had during the trial, and while writing my judgment. The High Court say my judgment is too long, but it is not proportionately longer than their judgment in appeal; and Mr. Geidt's judgment is also long. I may point out that if Mr. Reily had deposed before me as he deposed before Mr. Geidt, a great deal of my judgment would have been unnecessary, and that with regard to such misconduct on the part of the other Police as I had already dealt with Mr. Geidt may have thought that any criticism of his own would be like flogging a dead horse. To the acts of misconduct on which I had enlarged he has but briefly referred, but to a fresh piece of villainy on the part of Osman Ali and Kisto Bhadra—the forging of a "Surat hal," or inquest report—he has devoted a considerable space. Perhaps I am justified in thinking that he would have said more about

the other matters if I had not been before him, and if a Special Commission had not been already sitting to enquire into the state of the Noakhali Police generally.

The Government of India admit that there is much to show that the administration of the Police in the Noakhali district is not in a satisfactory state, but they have omitted to mention to whom that admission is due. Even Amir Ali J. (Pratt J. concurring) is constrained to concede the major premise that "a Judge in a criminal trial is entitled to criticise the laches or deficiencies of the Police who are charged with the investigation or detection of the crime. Indeed, in our opinion, he would be failing in his duty were he to act otherwise when he has come to the conclusion that the Police had not done their work properly, or honestly." And what they object to is my fitting these general maxims to particular facts.

Amir Ali J. (Pratt J. concurring) makes a great point of the fact that the witness, Torap, "admits that he was challaned in a case by the Sub-Inspector in which he was convicted." Amir Ali J. (Pratt J. concurring) omits, however, to indicate the nature of this case or the fact that it occurred just 26 years ago. This is what Mr. Geidt says upon the subject:—

"As regards the third witness, Torap Ali, the only possible cause for bias in his mind against Osman Ali was that the latter had sent up the witness for trial on a charge of rioting, which resulted in conviction and a sentence of one month's rigorous imprisonment and a fine of Rs. 15. This however was an incident that occurred more than 20 years ago, and is to my mind not a sufficient reason for thinking that in order to take revenge on the Daroga, he has entered into a conspiracy to put Sadak Ali in peril of his life."

His Lordship may be somewhat surprised at the fact of Amir Ali (Pratt J. concurring) giving any one the *chance* of exposing him as Mr. Geidt has done. Why, he may ask, supposing these two Judges were dishonest, should they not have acquitted all three accused, instead of acquitting two and remanding one for retrial?

Such a retrial was no part of Sir John Woodburn and Sir Francis Maclean's original plan; it was intended that the High Court should acquit all three, and quash the proceedings against Mr. Reily. Mr. Geidt was sent to Noakhali, not to do anything, but simply to keep up the illusion in the public mind that there was a possibility of Mr. Reily being brought to trial. It would not have done to let the public know that it had been arranged beforehand that Mr. Reily should not be tried. For the same reason it may be that Sir John Woodburn was comparatively careless in his selection, or rather that he selected a Judge who had a reputation for honesty. From this point of view it was an advantage to send a (reputedly) honest Judge to Noakhali, so long as that Judge in the end got nothing to do.

Mr. Geidt himself gave out, on coming to Noakhali, that the proceedings against Mr. Reily would be quashed. The contingency of a retrial of Sadak Ali never occurred to any one, it being quite without precedent for a High Court to remand for retrial a man who has been sentenced to death.

Mr. Geidt further stated that Sir John Woodburn had assured him that he would not have to stay at Noakhali for more than a month at the very outside. Mr. Walmsley, a junior Civilian, was informed by the Chief Secretary that he was to succeed Mr. Geidt; this Mr. Walmsley introduced himself to me in Darjeeling, and bought much of my furniture; he sent a great quantity of his own effects to Noakhali in the expectation of going there. This Mr. Walmsley wrote to Mr. Geidt, to know when he should join. Mr. Geidt replied on the 26th March, by an ordinary state telegram—"Directly Mr. Reily's case is disposed of, letter follows," and wrote to Mr. Walmsley to the same effect.

The turn which things ultimately took came as a most disagreeable surprise to Mr. Geidt, who did not share Sir John Woodburn's opinion as to the desirability of Noakhali; and when Mr. Cargill informed him, on the 17th April, of the purport of the High Court's order in the murder case, he was unguarded enough to express the opinion that it was a very weak judgment! However, even after this he expressed his intention of going away; it was

only under orders that he remained for the retrial, which he accelerated by every means in his power—wiring to the High Court to send records, selecting English knowing assessors, and the like, eventually quitting Noakhali within an hour of delivering judgment.

One consequence of the prolonged detention of Mr. Geidt was that the arrangement of posting Mr. Walmsley to Noakhali had to be altered, as his leave was coming to an end, and he was sent to Cuttack instead, and had to get all his things sent back from Noakhali.

I submit that the fact that Sir John Woodburn told Mr. Geidt that he would not have to stay at Noakhali more than a month at most, and that Mr. Geidt told some of the pleaders there that he did not expect to be there more than 3 weeks, proves conclusively that it was not contemplated when Mr. Geidt was appointed that he should either retry Sadak Ali or hold the preliminary enquiry in Mr. Reily's case.

For a month or 3 weeks was the minimum within which the High Court might reasonably be expected to pass orders in those cases; if Mr. Geidt had to do anything in them he would have had to remain at Noakhali for a month at least after the High Court orders were passed; in each case he would have not only to await the return of the records, but to summon witnesses, some of whom, especially in Mr. Reily's case, had to be brought from great distances.

If Mr. Geidt had thought that he would ever have to retry the murderers, a senior Judge like himself would never have acted in the way he did on first arriving at Noakhali. There is not much of interest in that very desirable station, and Mr. Geidt spent most of his spare time in the early part of his sojourn there in going about the bazaar and the neighbourhood of Char-Uria, and making private enquiries as to the truth of the case, the opinion people entertained of me and the like. He did this so openly that it was reported at the time in the papers. To avoid misconception I may add that my knowledge of the facts is derived from other sources also.

Not only was the action of the High Court unexpected—it was unprecedented. My authority for this statement is the "Calcutta Weekly's Notes," the "Law Times" of India, the reports in which are daily cited in the Courts.

I have not got the article itself before me, but it is quoted in the "Bengalee" of April 25th, from which I have extracted the following:—

WEEKLY NOTES ON NOAKHALI CASE.

It is not the Native Press alone that condemns the judgment of the High Court in the Noakhali murder case. The Calcutta Weekly Notes may be said to reflect the opinion of the Calcutta bar. It is edited by a barrister, and it seeks to represent the views of the lawyers of the High Court. The Weekly Notes as strongly condemns the judgment of the High Court as any Indian paper; and some of the grounds urged are precisely those which we have discussed in our columns. The Weekly Notes observes:—

"Very unusual procedure seems to have been adopted by the High Court in the case of Empress *versus* Sadak Ali and others, popularly known as the Noakhali murder case. We have not been able to find any precedent for remanding a capital sentence case for re-trial by the Court below when the High Court had a complete record, and considered the whole of the evidence before it. The order of remand is all the more remarkable, as it has reference to only one of the several co-accused whose offence arises out of one and the same transaction, and the evidence on record has a bearing on the whole case. We could have understood the order if the remand had been under sec. 375 of the Code of Criminal Procedure, for the purpose of further enquiry, or for taking additional evidence. No doubt, sec. 376 gives the High Court the power to order a new trial on the same charge. But if a re trial was ordered under that section, it is a matter of ordinary judicial fairness that the remanding Court should not comment on the evidence or express any opinion as to the credibility of any particular witness or witnesses.

It is not tolerated by the law that publicists should make any comments on a pending case lest there should be prejudice in the trial: on what principle is it to be justified that an appellate court should remand a case for re-trial, with findings as to who is to be relied on and who not, and what inferences arise from the evidence, recorded in the previous trial? It is manifestly placing a subordinate court and the assessors in an almost impossible position, namely, to arrive at any independent finding."

Our local contemporary finds fault with the judgment for disposing of issues affecting the conduct of the case by the police, when some of them at least were pending before the

court and had to be judicially decided upon facts which were to be laid before the court. The "Weekly Notes" observes :—

The order and direction of the remanding court transgress the fundamental principles of judicial trial in another respect. A very material issue in the case is whether the police had placed obstacles in the way of a proper judicial enquiry into it, and whether a certain police officer had perjured himself during the trial and attempted to pass off a certain forged document as genuine. We cannot comprehend how a court, not finally disposing of the case but remanding it, as against the principal accused, for a new trial, can record any finding with regard to such issues. Still this is what the learned judges have done. This seems all the more unfortunate, as certain rules in connection with those issues are still pending before the same court.

The Pioneer will please note that the native press is not singular in its condemnation of the judgment of the High Court. It is supported by organs of public opinion, which in legal matters are entitled to speak with authority.

The remarks of the "Weekly Notes" are also cited in "Capital" of May 2nd, which comments on them as follows :—

"This is an outspoken criticism, and published as it is in the pages of "Weekly Notes," must be taken to reflect the opinion of the local bar, or at least of a considerable section of it. Nor will it be deemed unreasonable that they should respectfully call attention to this trangression of an essential principle in the administration of justice."

Now, I would submit to His Lordship that senior and experienced Judges do not deviate from established principles of justice, which they have been accustomed to follow all their lives, by accident or without some very special motive. And I proceed to indicate to His Lordship what motives may reasonably be held to have actuated Amir Ali J. (Pratt J. concurring) in their very extraordinary procedure.

The reason why they commented on the merits of Mr. Reily's case, while his conduct was not only an issue in the retrials but was *sub judice* before themselves, was that they could not be sure of what Mr. Reily would do—whether or not he would apply to quash the proceedings as suggested by them, or would elect to stand his trial. In the latter case, the best thing they could do for him was to give him a certificate of character, so that if the case went before a jury it might be said on his behalf that he would have had no difficulty in avoiding a trial, but that he wished his innocence to be clear to all the world,

The reason why they remanded Sadak Ali instead of upholding the conviction in his case was that they did not wish it to be said that my judgment had been even in part upheld; or as the "Bengalee" of April 21st put it, "if the learned Judges have ordered a retrial in the case of Sadak Ali it is because they could not see their way to acquit Sadak Ali, and they had made up their minds not to uphold the conviction regarding any of the accused." The article in question (the second of a series of articles dealing with the Noakhali Murder Case) to the whole of which I would solicit His Lordship's attention, ends as follows:—"in adopting the course they have done they (the learned Judges) have succeeded in serving neither logic nor justice;" and if His Lordship will read the article he will, I think, come to the conclusion that even if there be doubt as to the justice of the High Court judgment, there can be none as to its want of logic.

And if it be asked why Amir Ali J. (Pratt J. concurring) took this extremely illogical course, and were further guilty of such an outrage as to try to dictate to the trying Court in a capital sentence case how much and which of the evidence that Court should believe, then I would submit that the object was to satisfy popular sentiment by convicting the principal murderer, and at the same time to throw over the Judge.

When he called on me at Noakhali, the day after the decision was given, Babu Radha Kanta Aich, the senior of the defence pleaders, told me that it passed his comprehension how the High Court could distinguish Sadak Ali's case from that of the other two accused. I told him I could understand them distinguishing Anwar Ali's case, but that I could not see any possible distinction between Sadak Ali and Aslam; the evidence against these two being precisely similar. Nor so far as I know has any one attempted to justify the distinction. But though there is no distinction from the stand-

point of legal evidence between Sadak Ali and Aslam—either both of them are guilty or both are innocent—there is a considerable difference in the way in which the Public would look at their acquittal; for, as I found in my judgment, and as Mr. Geidt has also found, Sadak Ali was not only concerned in the murder but he took the leading part in it.

And the reason why Amir Ali J. (Pratt J. concurring) took the extraordinary course of directing a retrial and thereby exposing himself and the Government to the rebuff which Mr. Geidt has given them is, I submit, the physical cowardice of Amir Ali J.—his dread of assassination by some of the murdered man's friends.

It appears to be admitted by the two Governments that my conduct in this case has made me a popular hero, and His Lordship can understand that Mr. Amir Ali must have felt himself likely to incur considerable odium by dishonestly acquitting the murderers—an odium accentuated by the fact that all the parties concerned in the case are Mahomedans, and that he is himself a professed Mahomedan. Noakhali is the most purely Mahomedan district in Bengal, I believe in India, and any one who knows the Eastern Bengal Mahomedan will know that Amir Ali J. was incurring a very real peril. The Bengali Hindus may be men of their tongues, but these Eastern Bengal Mahomedans are men of their hands, and probably out of Ireland there is no part of the British Empire where a failure of justice is more frequently redressed by private vengeance. The number of gunshot murders in the adjoining district of Backergunge rose so high some years back as to necessitate the disarmament of the district; and if the characteristics of the Noakhali Mahomedans had ever been absent from Mr. Amir Ali's mind, they must have been recalled to his recollection by a passage in my judgment in the case (already mentioned) of Lal Mir, his acquittal of whom created a sensation only less than his decision in the present case. "In Noakhali, I had said, "the Hindus are an insignificant minority amongst a mass of Mahomedans of much the same class as those in the neighbouring district of Backergunge."

Nor was Mr. Amir Ali alone in peril. It must be remembered that this case is only the culmination of a reign of terror in Noakhali, during which no man, at all events no poor man, has been safe. When I sent Mr. Reily to jail after delivering judgment I was followed to my bungalow by hundreds of Mahomedan cultivators, men who did not know a word of what I had said, but who knew and saw what I had done—that I had laid the axe to the root of Osman Ali's tyranny. Even when the news of my suspension became known, many of these Mahomedans were only restrained from violence by the influence of the Baptist Missionary, who has been labouring among them for 15 years; and at the time that the High Court was trying the appeal, Mr. Cargill, the District Magistrate, became so alarmed at their attitude that he wired to Government to know what he should do.

The plan of acquitting two of the murderers and remanding the principal one may, therefore, have secured to Mr. Amir Ali a happy *via media* by which he could satisfy Government and at the same time save his own skin, possibly the skins of certain Government servants at Noakhali also. Moreover, if Mr. Geidt had done as was expected of him the High Court censures would have lost none of their weight, indeed, they would have received the endorsement of a quasi independent tribunal. Popular feeling would be appeased by the conviction of the principal murderer. A senior member of my own Service would have added the weight of his name to the condemnation placed upon me for believing Torap and Hosain. While the assessors would have only found Sadak Ali guilty without saying on what evidence they found him guilty.

It will be seen that neither the native press, the commercial community, nor the Calcutta Bar anticipated that Mr. Geidt would have ventured to disregard the mandate conveyed to him as to which witnesses he was to believe and which he was to reject as false witnesses. Sir John Woodburn had done his utmost to keep Mr. Geidt in good humour, even going the

length of ordering the District Magistrate to meet him at the outskirts of the District, and personally conduct him to Noakhali; and I have less difficulty in believing he was deceived in his opinion of Mr. Geidt, as that gentleman, at first, certainly did everything in his power to induce that deception. I saw him in the Club at Calcutta for several days before there was any talk of his going to Noakhali, and though I have been acquainted with him for some time he always avoided me. Even so late as the 29th March he took the extraordinary step of entering and searching my private house at Noakhali, without any reference to the lady I had left in charge of it. From his reply to a letter addressed to him on the subject (Enclosures Z 11) it will be seen that he alleged both the entry and search to be accidental.

I submit to His Lordship that it is probable Mr. Geidt went to Noakhali, even as Balaam went to Balak, with every anticipation of being able to meet his patron's wishes, but that when he found what he had to do it proved too much for his stomach. The turning point is probably marked by a judgment he delivered on April 11th (the second day of the hearing of the appeal by the High Court) in a case (usually known as the Stolen Notes Case) to which I had incidentally referred in my judgment in the case of Sadak Ali and others (vide High Court's paper book, page 93 [Appendix, page 220]). This judgment of Mr. Geidt's is noticed in the "London Times" of May 23rd, which summarised it as follows:—

"Mr. Reily has incurred the severe censure of Mr. Geidt, I.C.S., who succeeded Mr. Pennell as Sessions Judge of Noakhali, in passing judgment on a stolen note case, for suspending a police witness on a charge of giving false evidence without seeing the evidence, and solely on the report of two subordinates, one of whom the evidence implicated. Mr. Geidt found that Osman Ali, the Sub-Inspector who came in for such animadversion in Mr. Pennell's famous judgment, had altered the numbers of certain notes connected with the case, and that there were strong suspicions against Kailas Kerani, another Police subordinate."

(They mean the Head Clerk of the Police Office.)

The whole judgment is reproduced in the "Bengalee" of April 19th (Enclosure Z 12).* It will be seen on referring to it that Mr. Geidt not only developed at greater length the views adumbrated in my judgment, but expressed himself as follows:—

"The matter ought not to end here. For the sake of the purity of the Police administration of this District, the suspicions aroused ought to be investigated, and I have dealt at such great length with each of the points in the hope that my review may assist the authorities in the conduct of that investigation. The facts brought to light lead me further to recommend that in these enquiries some experienced officer of detective ability *unconnected with the district* in the past few years should be associated."

His Lordship will now be in a position to understand what weight he should attach to the judgments of Amir Ali and Pratt J.J., either in the murder case or in that of Mr. Reily. There remain, however, one or two points in connection with the latter case as to which my action has been impeached, and which I had better, therefore, briefly notice.

I am blamed for committing Mr. Reily to jail. Now, although this is really the head and front of my offence *in India*, it is not likely much will be made of it in England; for in England the saying that the law is no respector of persons still has some living force. If I believed, as I did believe, that the man had committed non-bailable offences, the law (section 497 of the Criminal Procedure Code) expressly provides that I shall *not* release him on bail; nor is there an exception in favour of Government servants, even if white policemen. What Government really resent is the blow to their *prestige;* but I submit that the British public in such a case are likely in such a case to have just about as much regard for the prestige of the executive authorities as Sir Peter Teazle had for Joseph Surface's sentiments.

The Executive authorities in India are very anxious to impress upon the common people that rex is lex. Mr. Reily in jail was an outward and visible sign that lex is rex. It was a sign very much needed in the then state of the Noakhali District; and may not have been without its uses throughout a Province the head of which thinks it not unbecoming to excuse himself for allowing the law to take its course.

* Not printed.

In the same breath in which he condemns me for "exceeding all legitimate limits of criticism in my observations on the conduct of the Superintendent of Police," and for "lavishing the imputation of perjury upon him," Amir Ali J. (Pratt J. concurring) says that I was myself of opinion that there was not even a *primâ facie* case against him; and that in view of this "he could not help regarding my action with the strongest disapproval." That is to say, I am first taken to task for the vigour with which I express my opinion of Mr. Reily's guilt, and then it is argued that I did not believe him guilty, or I would not have thought a preliminary enquiry necessary. Further, I am blamed for not drawing up a charge at the *beginning* of this preliminary enquiry. Finally Amir Ali J. (Pratt J. concurring) insinuates that I added the charge of forgery in order to deprive Mr. Reily of the right to bail.

In answer to these and other criticisms I beg to refer His Lordship to four articles on the Noakhali Cases (Nos. IV., V., VI., and VII.) in the "Bengalee" of May 3rd, 5th, 10th, and 15th respectively. (Enclosures Z 13, Z 14, Z 15, and Z 16.*) The articles were written by Mr. C. R. Das, a junior barrister, practising before these learned Judges. The point which I wish to make is that the ridiculous character of their Lordships' arguments was palpable to the humblest practitioner in their Lordships' Court, that their judgment was, and was felt to be, not only incorrect but dishonest. As Mr. Das says in Article VI., "We cannot help observing that an argument of this description (about not framing a charge at the *beginning* instead of at the *end* of the preliminary enquiry) serves to lend colour to the popular impression—however erroneous that impression may be, that their Lordships made up their minds to misunderstand Mr. Pennell at every step, and at every turn of this trial," while the series concludes as follows:—"Is the public to say nothing when time after time two of His Majesty's Judges in this country, in the discharge of their judicial duties, should succeed in completely misunderstanding a Sessions Judge, and should base their "strongest disapproval" on such hopeless and unjustifiable misunderstandings?"

Mr. Das has so thoroughly exposed the High Court in these articles that for the most part I need not add to his arguments. I should like, however, to illustrate by an example the sophistry by which the High Court represent that, as I thought a preliminary enquiry necessary, I could not even myself have believed in Mr. Reily's guilt.

Suppose a District Magistrate were to be assured by half a dozen respectable witnesses that they had just seen A murder B—nay, suppose even that he had witnessed the murder with his own eyes—he could not legally commit A for trial without a preliminary inquiry; before he can commit A or frame a charge preliminary to commitment, the law requires that he shall record the evidence of the witnesses in due form, and this must take time, especially if they have to be sent for. It does not follow, however, because the Magistrate is not in a position at once to charge or commit A, that, therefore, he must be held to be of opinion that there are no reasonable grounds for believing in A's guilt, still less that he is acting illegally in keeping A in custody.

As to the insinuation that I added a charge under section 466, I.P. Code, to deprive Mr. Reily of the right to bail, I would point out that the learned Judges are totally wrong in saying that section 471 is bailable. It is bailable or non-bailable according to the character of the forged documents; if the forgery itself is non-bailable, as in this case, using the forged document is non-bailable.

With regard to the merits of the charges of forgery and using a forged document, I would point out that even the learned Judges admit that Mr. Reily was guilty of an error of judgment. This point also is most aptly illustrated by an example. Suppose the Secretary of a Company makes out a cheque to me for 5 guineas for my services as Director, but I subsequently change the 5 into 500, without, however, altering the counterfoil, which happens to be out of my reach, I should, no doubt, be guilty of an error of judgment in presenting the cheque so altered, but I am afraid a censorious

* Not printed.

world would take an even more uncharitable view of my conduct, nor would the fact that I was almost certain to be found out avail me much. I should, no doubt, be allowed to offer any explanation I liked when the time came, but that time would come when I was put upon my trial. In this case Mr. Reily was entitled to offer, and would, indeed, have been asked for, an explanation after the evidence against him had been recorded, and before he was formally charged and committed to the High Court for trial.

If I had not honestly believed I was doing right in keeping Mr. Reily in jail, is it likely, I submit, that I would have refused to avail myself of the opportunity for releasing him, which the Chief Justice's telegram afforded; or that I would have wired to the Chief Justice my reasons for rejecting the application for bail, which (but for his wish to conceal his own action in the matter) the Chief Justice could have at once laid before the Criminal Bench, and so, if they considered the reasons insufficient, have obtained Mr. Reily's immediate release? Is not my action on receipt of the Chief Justice's telegram the best possible proof that I thought I was doing what was right, not what was wrong?

I have now dealt with such of the charges against me as relate to my conduct in the Noakhali cases; and trust that I have succeeded in convincing His Lordship that the strictures which the High Court passed upon me in connection with those cases are discreditable, not to myself, but to the Judges who passed them, and the high-placed officials who first procured them to be passed, and are now making use of them to damage me.

There remain only charges of insubordination and vanity. But before passing on to these I will briefly notice certain (not so much charges, as) covert insinuations made against me by the two Governments.

In the first place the Government of India makes a great point of the publication in the press of my judgment and of certain orders. I am not aware of any civilised country in which the judgments and orders of a Criminal Court, so soon as they are delivered, are not public property, and India is no exception to the rule. The real grievance of Government is, no doubt, that whatever judgment or order I deliver the press (native as well as European) can publish without fear of consequences; my only reply is, that they can alter the law if they like, and if Parliament will let them. Both the judgment and the orders complained of were read out by me in open Court; and any pleader of my Court, or any newspaper representative, is always allowed to look at a judgment or order of mine. I have allowed this to be done ever since the time (1890) when I was Assistant Magistrate of Rangoon, and when my judgments, being of local interest, were very frequently reproduced in the Rangoon papers; and I have found such little pieces of courtesy to the gentlemen of the fourth estate to be very conducive to the most favourable construction being placed upon Magisterial sayings and doings. I consider publicity, except, perhaps, in a very few cases of sexual immorality, to be essential to judicial proceedings; I have never tried a case in camera yet, and except Mr. Bourdillon, no one has ever asked me to do so.

The Government of Bengal try to make out that the judgment, &c., appeared only in the native papers; and I presume it is with a kindred object that the Indian Government have reproduced a letter which I wrote to the Government Pleader at Noakhali, not from the Advocate of India, an English paper (published in Bombay) in which it originally appeared, but from the "Bengalee," into which it was copied.

I could hardly be blamed even if it were a fact that the English press did not reproduce my judgment; but as I suppose the insinuation is that only the native community took any interest in the case, I may point out that the Editor of the "Statesman," the most widely circulated of the English papers, wired to me for a copy of my judgment, and that either the whole or parts of it appeared in the "Statesman," of Calcutta, the "Pioneer," of Allahabad, the "Morning Post," of Delhi, the "Civil and Military Gazette," of Lahore, the "Advocate of India," of Bombay, the "Madras Mail," of Madras, and possibly in other papers, which I have not seen!

All these are leading English Newspapers. I do not believe there was a single English Newspaper in India which did not notice the case; to some of those notices I have already referred. If it had been only the native newspapers the two Governments would not be nearly so angry as they are.

The Bengal Government have complained that I brought on the record on the 31st January, 1901, the Chupra case Resolution of the Government of India as though it had been delivered to me on that day. "The Resolution (they say) was dated 18th April, 1900, and was forwarded to him on the 28th idem?" I never said it was'nt the date; 28th April is given in the Exhibit itself, so, to use Sir John Woodburn's own language, the idea that I represented it was sent me on any other date is an entire fiction of his imagination. All the other Exhibits are "brought on the record" in the same way on the days on which I first used them. All which the fact of my bringing Exhibit X 21 on the record on the 31st January indicates is that on that date I had got to the stage of my judgment marked by page 97 of the High Court paper book [Appendix, page 223]. In paragraph 6 of his letter, 123 A., Sir John Woodburn complains that no authentic copy of my judgment reached him till he got printed copies of the paper book, apparently after the 27th March. I can hardly understand the gist of this—whether Sir John Woodburn wishes to apologize for "allowing the law to take its course in respect of Mr. Reily," to which I can only say that no apology is necessary, or to blame me for the delay in printing the paper book. I have already pointed out why and by whom the printing was delayed; if the learned Judges had given the Lieutenant-Governor a copy before, they would have had no excuse for not taking up the case, for if his copy were ready, their own copies would be ready; if he wishes to blame any one for the delay he should blame them and not me.

It remains for me to deal with the charge of "habitual and designed insubordination" contained in paragraphs 11 and 14 of the Government of India's letter. It would be, perhaps, sufficient for me to point out that not a single instance of insubordination is cited prior to the Noakhali case. It would appear from this that my "habit" of insubordination was, at all events, carefully repressed by myself. No doubt the executive authorities unconsciously treat my judicial conduct in the Mymensingh and Chupra cases as insubordination, but I do not think His Lordship is likely to share that view or to consider, as Mr. Justice Pratt apparently does, that because Government pays the judicial piper, it should, therefore, call the tune.

The fact is, I would submit to His Lordship, that for a long time I have known myself to be a marked man; that I have been perfectly well aware that the smallest pretext for getting rid of me has been eagerly watched for, and that I have been proportionately careful to avoid giving any such pretext. The fact that there was one treatment for the rest of the Civil Service and another for me has been patent to all for a long time past. As Mr. Chapman told me on the 26th December last, when I handed him Exhibit X 8, "If it were any other Judge but you I would take upon myself to say you could have the one day's casual leave, but as it is you I must take Rampini's orders; and in the same envelope in which I sent the Chief Secretary the demi-official application for privilege leave, to which Exhibit X 26 is a reply, I thought it necessary to enclose a private note, of which enclosure Z is a copy.

If the Government of Bengal is unable to specify a single instance of my insubordination before the Noakhali case, I would submit that the charge of *habitual* insubordination must fall to the ground. And as to the charges of disobeying Sir John Woodburn's orders in connection with that case, I beg to state that I admit the disobedience, but that my submission to His Lordship is that the disobedience was a duty; that so long as submission to tyranny affected myself, I submitted, but when I felt that Sir John Woodburn was simply abusing his position as my superior to defeat the ends of justice, I considered that my duty to him was overruled by a higher duty, by that of securing, as far as in me lay, that justice should be done.

There was no possible reason, except Sir John Woodburn's private interest, for refusing to allow me to come to Calcutta during public holidays.

As for the order to return to Noakhali, given me on the evening of the 3rd March, I have already pointed out that if I had obeyed that order I should have had to take back the record to Noakhali with me, and thereby have not only frustrated the object of my visit, but disregarded the expressed wishes of the Chief Justice.

As to the charge of declining to make over the record on the 4th to the Officiating Registrar, I have already pointed out that the two Governments do not profess to know anything about this except what the High Court has told them, and that the High Court have declined to proceed with the charge; further, that charge is untenable for reasons already stated. The second order to return to Noakhali was given not on the 5th but on the 4th in the same letter which suspended me. It was necessary that I should remain in Calcutta to make over the record; if I had taken it away with me to Noakhali I should have given colour to the charge of not wishing to deliver it up; moreover, as soon as I was suspended, the Lieutenant-Governor had absolutely no excuse for directing me to go to one place rather than another. If he meant to give me any further orders, I would receive those orders sooner at Calcutta; while he knew that I was in bad health, and that staying on in Noakhali would make me worse. The real reason why the order to return to Noakhali was given has already been stated—it was to prevent Sir Francis Maclean's proceedings from coming to light. Even apart from the question whether, after suspending me, Sir John Woodburn had any right to order me to go to one place rather than another, I could not possibly return there leaving the record in my hotel, and taking it back to Noakhali would have been construed as disobedience of the High Court. I have already stated how I hurried off to the High Court on the 6th March, to avoid arrest. Even after I made over the record of the murder case I was still left with another, that of King Emperor *v.* Reily, for which the High Court had issued a rule returnable on the 9th March. I did not know what to do with this record; ordinarily I should have made it over to my successor, but Government had not appointed any successor, and if I had gone back to Noakhali with it on the 7th the High Court could not possibly have got it on the 9th or for some days after; I, therefore, got my Sheristadar and clerks, who treated my wishes with the same respect as they had formerly shown to my orders, to page and index this record, and to give me certified copies of the Chief Justice's telegram and other papers contained in it, and on the afternoon of the 8th March, the day before the rule fell due, took it to the High Court and tendered it to Mr. Sheepshanks, the Officiating Registrar, with a letter of which Enclosure Z 17 is a copy. The Registrar referred the matter to the Criminal Bench, and under their orders took it over and gave me a proper receipt; I was still without a proper receipt for the main case (which I eventually got on the 13th), but did not stay in Calcutta for it, as on the evening of the 8th my health, which I had represented on the 28th February to be bad, completely gave way, and on the 9th I went to Kurseong, the nearest hill station to Calcutta to recuperate; I ultimately returned to Noakhali, not, as the Government of India say, in order to receive a public ovation, but in order to break up my establishment, pack up my things, and try and dispose of any furniture—I could not help people turning out to see me—as I have already remarked, one has to arrange days beforehand in order to get over the 26 miles between Feni and Noakhali. I do not quite know whether the Government of India, by political demonstration, refer to my entry into Noakhali or to the fact that a tea party was given in my honour before my departure. If the latter, I would say that such tea parties, attended with theatrical performances, are almost always given at Noakhali when a European resident goes, and that I myself subscribed Rs. 25 to Mr. Cargill's tea party in May, 1900. My party was, no doubt, more numerously attended, but that may be due to the fact that I have more friends, and that those friends, unlike some gentlemen in Calcutta, were anxious to show that the fact of my being in disgrace with Government made no difference to them. An allusion was made to my misfortunes in the theatrical performance, but it was only to the effect that "King Edward" would put everything right—a sentiment to which I submit the Government of India cannot object. As for the tea party being intended

as " a political demonstration," I think it sufficient to point out that Mr. Geidt gave the Munsifs and ministerial establishment leave to attend it, and that it was attended by all the European non-officials in Noakhali except the Roman Catholic Priest, who stayed away, as he explained in his letter (Enclosure Z 18) merely because he had reason to believe that Mr. Cargill would make his parishioners suffer for it if he attended. It may not be inappropriate for me to add that Father Français (who is a gentleman by birth, and old enough to be Mr. Cargill's father) afterwards came and told me that the day before Mr. Cargill had treated him as Sir Francis Maclean had treated me, for no other reason than that he had been seen to visit my house.

The Government of India next complain of my communicating papers to the press. Why they should object to their own communications being published, unless that they are ashamed of them, I do not know, and if the language of my communications is improper, their publication will only turn public opinion to the Government of India's side. So far as I know I have not divulged any state secrets, and as for attempting to influence public opinion, I would point out that I have only followed the example which the Bengal Government has itself set me. I have previously referred to the inspired paragraph in the " Englishman," and the official communiqués sent to the press on the eve of the contemplated coup d'état. As the facts became known Government has thought it hopeless to attempt to influence the Indian press, and with the exception of occasional inspired paragraphs in the accredited Government organ, the Allahabad " Pioneer," nothing appeared till quite recently. I see from Indian papers lately to hand that as soon as His Lordship sent me the Government of India's letter the fact that the papers had been sent home was communicated to the press. I would further point out that the references to the case in the " London Times " have not been made at my instance, and that a comparison of dates will leave little doubt that the information was supplied by the Indian Government. To give a single instance, no one but the Government of India could have informed the " Times " by April 22nd of the rejection of my first memorial. They got the information before any letter from me could have reached London.

If I have sought to influence public opinion by communicating some of the papers of the case to the press, I have but followed the example already set me by Government. As I remarked in the Chupra Case of Messrs. Corbett and Simkins' treatment of Narsingh Singh, their case appears to be that they can do anything they like to *me*, but that I must do nothing to them. The only difference between my action and theirs is that I have communicated to the press nothing but official papers—they have communicated incorrect versions of matters of fact.

Next, the Government of India complains of my instructing the Government Pleader at Noakhali as to the conduct of the case before Mr. Geidt. I would point out that after my suspension I ceased to be a Judge and became a private individual. My position does not require me to adopt the disinterested attitude affected by the Government of Bengal and the Government of India. They may pretend that they were not interested in the result of the trial, but it is not necessary for me to do so. They and I were just as much upon our trial as the accused, both in the High Court and before Mr. Geidt. I may further point out that the Government of India's abhorrence of my instructing counsel in the case was not shared by the Bengal Government's late Legal Remembrancer, nor, apparently, by the Government of Bengal. Mr. B. L. Gupta, who but a few days before had been promoted from the Legal Remembranship to a seat on the High Court Bench, told me on April 12th that he saw no harm in my instructing Mr. Leith, the Deputy Legal Remembrancer, who was appointed by Government to support the conviction, but seemed to me to be taking no trouble about the case, and authorised me to inform Mr. Leith (who, till a few days before, had been his immediate subordinate) accordingly. I went to the Bengal Club to see Mr. Leith, and as he refused to see me, I went to Mr. Buckland, the Chief Secretary, and at his request reported to him in writing, for such action as Government might

think necessary, the opinion of Mr. Gupta and the conduct of Mr. Leith. The result was that a demi-official letter from Mr. Buckland was brought to Mr. Leith in Court, and that the latter gentleman, who heretofore had ignored me, made a pretence of consulting me, and afterwards made a false excuse for his refusal to see me in the morning. From this I venture to infer that the Bengal Government were not prepared to differ from Mr. Gupta as to the propriety of my instructing Counsel in connection with the case.

The Government of India complains of the nature of my instructions. It is natural enough they should not like them. It was not to their interest that the case before Mr. Geidt should end as it has; it was to mine.

Finally, the Government of India complain of my leaving India without obtaining permission—they call it "desertion." If the Government of India believed that I knew before that permission was required, why should they direct me to be informed of it at the last moment? Why did they not tell me I was not to leave India? Or wire to me at Aden to return?

Do they say that they have ever told me to return? Or that I have attempted to conceal my whereabouts?

They think it absolutely inconceivable that I should imagine myself at liberty to leave India when they decline either to employ me or pay me. As I have said all along, I considered their intimation as meaning that they wished me to make a formal application for permission so as to save their face.

What reason do they assign—can they assign—for their unwillingness to let me go? From the Bengal Government letter, No. 299 A.D., dated the 19th May, it appears that the Bengal Government would not have given me permission, and that they attribute my failure to perceive this to loss of mental balance. It will be seen from these papers that the Bengal Government had already, on the 9th May, recommended my dismissal; that they had neither given me a hearing, nor proposed to give me a hearing; and that they had kept back both my memorials to His Lordship.

The Government of India do not even allege that they intended to give me any hearing. The case of His Lordship's subordinate Governments appears to be this, that they will neither employ me, pay me, nor allow me to take up other employment; that they need neither hear me in my defence, nor inform me with what I am charged; that they may concert schemes to ruin me behind my back, and propose that I should be dismissed without a hearing; they they are to be at liberty to keep back any representation which I may make to His Lordship till it suits their book to send it on; and that I am to wait in India till their plans are consummated, and I receive orders of dismissal. If I object to this, they accuse me of loss of mental balance. I submit that the only misapprehension of which I have been guilty is in thinking that these authorities have any sense of decency or of common fairness between man and man; that under the circumstances stated, ordinary prudence dictated that I should take a single ticket to Europe while I still had the money to do so; and that the real reason of Lord Curzon's foaming at the mouth is that by coming home I have forced his hand, and upset all his plans.

I have reason to believe that Lord Curzon's own intention was to compromise this case; not to give me a public hearing, which would enable me to make the disclosures I have now made, but to come to terms with me *some how*. This would have not only avoided these very awkward disclosures, but would have gained Lord Curzon some cheap popularity, as in the Chupra case, with that very numerous class of mankind who do not look beneath the surface. Mr. P. Stuart Hogg, a member of the mercantile community, who wrote to Sir H. Campbell-Bannerman about this case as far back as March 24th, informed me early in May that he had himself seen a minute in Lord Curzon's own handwriting, dated eight days previously, in which he advocated that I should be reinstated and compensated. Of course, now that I have crossed the Rubicon there is no further motive for conciliating me; and the nicely-balanced articles in the "Times" have accordingly ceased.

I am accused of a wilful desire to provoke removal from the service of which I am a member. (I suppose the last six words are added for the sake of euphony only.) If to protest against such removal by every means in my power is provoking it, then I must plead guilty; otherwise not. I am, indeed, aware that to protest against the injustice of a superior is regarded in India as the most heinous offence of which a subordinate can be guilty; but I hardly expected to see the principle so unblushingly avowed.

Lastly remains the charge of vanity; that I am so deluded by a morbid, and sometimes malignant, vanity, which has become the irreclaimable habit of my character, that I can no longer be employed to the advantage of Government in any capacity. To a general charge like this I can only oppose a general denial. The two Governments say I am a monster of egotism; I, on the other hand, say that I am a very insignificant person, and that if I differ from others in my position it is only in the fact that I appreciate my insignificance, and do not think that the world will come to an end if I cease to draw £2,000 a year.

In saying this I do not wish to detract from the importance of this case, but merely to point out that I am the most insignificant part of it. Such importance as I have in the world has been conferred upon me by His Lordship's subordinates; it is the result of their treatment of me. As I saw it put in a native vernacular paper, before the Chupra case, who knew or cared about Mr. Pennell? As was said of another Englishman 250 years ago, "Till this time he was rather of reputation in his own country than of public discourse of fame in the kingdom; but then he grew the argument of all tongues, every man inquiring who and what he was that durst, on his own charge, support the liberty and prosperity of the kingdom." If I am important now, it is because I stand for certain principles which His Lordship's subordinate Governments are endeavouring to trample under foot. No man, however insignificant in himself, is unimportant when he represents the liberties of a nation.

The Government of India resent my "political homilies;" but at the risk of incurring like reprobation from His Lordship, I venture to reproduce here an extract from an article (purporting to be written by an Indian civilian) in the "Times" of India, which not only puts the whole situation in a nutshell, but very accurately indicates the way, and the only way, in which my personality is of any public importance:—

> The issues on which the verdict of the High Court in the first place and of the public as the last and greatest tribunal is sought can now be disentangled. The main issue is a political one, as indeed all great social and administrative issues are. It is substantially the same issue as had divided publicists into two camps since first we essayed to rule the peoples of India, and of which the Ilbert Bill discussions were but a single manifestation. It is beside our present object to do more than sketch the nature of the division; nor do we seek to champion either party. Starting from a common base in the obvious fact that we have acquired the Empire of India, mainly by conquest and the forces of superior civilization and character, the parties divide according to their moral, social and political bias, and take divergent views of the proper aims and methods of our rule. To the one school, the native inhabitants are as sheep to a shepherd, whom he desired to protect from the calamities of peace and of war; so that waxing fat and multiplying in prosperity by a farsighted calculation the well-being of the flock may yield the maximum of profit to the shepherd. But they are ever to remain sheep and ever inferiors. To the other school, they are as children weak, foolish and unfit to rule, but always capable of growing up under a wise and sympathetic training into men and equals. To the one party the great gulf is ever fixed; to the others, it is ever being bridged. The one is content with subjugation: the others seek further to incorporate. Though these two policies each command adherents among men worthy of respect, officially and publicly, the British administration is pledged to the policy of incorporation, not only by the Delhi Proclamation, but by the constant tenor of all our declarations.
>
> It makes a whole world of difference from which point of view we accustom ourselves to regard the relations of our officials to our native subjects. The Anglo-Indian official is peculiarly exposed to the temptation of mistaking his position of a public servant for that of a master. He adopts this attitude not only to the natives, but in some measure also to his non-official compatriots. He ceases to be the minister and develops into the despot and part-owner of his charge, responsible to the inner hierarchy of the official world, and not to the public, for his actions. He is so placed as often to lose that sense of self-restraint and self-appreciation which would enable him to recognise his true position as schoolmaster in the scheme of empire, training up for the British nation its future

citizens. He is responsible for them to his employers, and his powers over them, though great, are not arbitrary and unlimited; and he may not subordinate the interests of his charges to those of himself and his fellow servants. India is rich in examples of both theories. For him who regards our native subjects as mere sheep and chattels it is impossible to practice the theory of their equality before the law with ourselves. When a native is rude, it is to him perfectly right and natural to knock him down and thrash him, and it is absurd to suggest that the Englishman who does so should meet with the same treatment as if he committed a like assault on a compatriot. A Judge who persisted in the opposite view, and gave vehement publicity to his opinions, would have to be visited with some mark of authoritative displeasure. Similarly to suggest that the evidence of a white official should be weighed in the same scales with that of a native, or to hold that he might even be made amenable to the same law of perjury, would be such an insult to the official world as to justify the intervention of superior authority. It would be less heinous for a white Superintendent of Police to conduct himself disgracefully in a murder trial than for an outspoken Judge to wound by his comments the pride of the dominant race.

The situation can be well illustrated by a parable. Suppose a bank whose shareholders entrust the management of their capital wholly to their paid directors. Suppose, further, that the directors be allowed such latitude as in time to persuade themselves that the bank assets are their own. In these circumstances it is found that one of the paid directors has appropriated to his own use a sum from the bank till. The other directors regard it as a small matter. After all, they are, in practice, owners; and it seems absurd to prosecute a fellow-director as they would any outsider. They seek to hush up the matter. But the cashier refuses to falsify his balance-sheet, and insists that the true state of things shall be presented to the shareholders. The directors regard his refusal as insubordination and gross impertinence, and send him to another branch. But the cashier will not submit. At last, when it is imminent that the shareholders will take the matter up, the directors compel their colleague to make tardy restitution, and reprimand those of the staff who were privy to his dishonesty. But this is known to be mere eyewash, and in course of time the reprimanded officials rise to higher positions, while the obstinate cashier meets with the treatment to be expected by a man the directors dare not dismiss for fear of the shareholders, but who is not the kind of subordinate it suits them to have. In this parable the public of the Empire are the shareholders, the Bengal Government are the directors, and the declared rights of the Indian subject are the cash, and Mr. Pennell is the cashier. We now see at a glance the questions which, as shareholders, the public have to decide. The attitude of the directors to the cashier is important and relevant only as a gauge of their attitude to the cash entrusted to their charge.—*The Times of India.*

I would humbly remind His Lordship that the case now before him raises many questions of great public importance which it is no longer possible for him to pass over, and that what he may do with me is but a side issue.

As, however, it is the only issue with respect to which I can expect to be consulted, I may be allowed to adduce certain general considerations which should, I submit, weigh with His Lordship against the adoption of the course proposed by the Government of India, which is that I should be dismissed without either pension or any other compensation.

First, from my personal point of view, it will, I think, be conceded that Government Service differs in certain very important respects from service under a private employer. It would be well within the rights of the latter to dismiss a servant after 16 or 18 years' service for no better reason than that he did not want him any longer: but the private employé has known all along what he had to expect, and his wages have been regulated accordingly. A Government servant is content to accept lower pay because he thinks he gets a certainty; he has a more assured position and a pension to follow. The pension of a Government servant, I submit, is nothing more than deferred pay; it is held out to him at the very outset as one of the considerations for his service. In the case of Indian Civil Servants, like myself, it has further to be borne in mind that we have to contribute towards our pensions, a certain proportion of our pay being automatically deducted for that purpose.

There is the further consideration that Government Service is of a special character; that a servant dismissed by one private employer can get the same sort of employment under another that a Government servant cannot. Such knowledge and experience as I have acquired since I entered the service, including the greater part of my studies at the University, is useful to me in Government Service; makes me a more valuable public servant; but is not the sort of knowledge that any private employer will pay for. Even my spare time in India has been mainly devoted to the study of Oriental languages, a knowledge of which is very useful to a Government servant, but which has little or no commercial value.

I would point out that though I am now accused of incompetence, I was considered to be of good abilities when I entered the Service. I took two first classes at the Universities, one in Latin, at London, in 1882, and another in Jurisprudence, at Oxford, in 1886. In the latter year I also gained the Boden University Scholarship. Between 1882 and 1885 my time was entirely devoted to studies in connection with the Indian Civil Service, but even in these I showed the possession of at least ordinary ability. In 1883, at my first attempt, I passed first at the Open Competition, obtaining what were then the highest marks on record. In 1885 I passed first at the Final Examination. I obtained a prize for Hindustani at one of the Intermediate Examinations (at which I also stood first), and prizes for Law and Bengali at the Final Examination.

From these facts His Lordship will see that in my younger days, at all events, I possessed abilities which, if I had taken up any other employment than Government Service, I might reasonably have expected to secure me, at least, a modest competence. Nor is it alleged against me that I have shown myself wanting in industry or application, or that I have been guilty of any moral depravity, except of a highly technical kind. No one says that I am a drunkard, or a gambler, or licentious; the most that is alleged against me is that I am vain.

I was 17 when I competed for the Indian Civil Service; I am now 36. If the course proposed by the Government of India be adopted—18 years, and those the best years of my life, will have been thrown away.

Further, I would submit that before entering Government Service I had to undergo two medical examinations, and it is to be presumed, therefore, that I was then of average health and strength. The three medical certificates filed in the Noakhali case (Exhibits X 34, X 35, and X 36), and the letter from Major Charles (Enclosure Z 2) will show that this is not now the case, but that I suffer from an acute and painful disease, the attacks of which are marked by "intense headache and prostration, lasting from 24 to 48 hours." This disease has not only been contracted in Government Service, but is the direct result of the action of His Lordship's subordinate Governments, who admit that they know I need a dry climate, and then proceed to station me in the dampest districts they can find.

I think I may fairly plead that when I have spent my youth, and lost my health in Her late Majesty's Service, some more solid reasons than any the Government of India has adduced should be required before turning me adrift as they propose, with my living to earn, a shattered constitution, and a stigma connoting moral depravity to my name.

The charges against me for a period of 16 years are, briefly, that I thrashed a man in 1893; that I made a high official very angry in 1894; that I did an act of justice in 1899; and that I tried to do another in 1901; to which I may add that but for the third and fourth His Lordship would never have heard of the first and second. To dismiss me on such pretexts would, I submit, be nothing less than a crime.

His Lordship will misunderstand me if he thinks that I am appealing *ad misericordiam*. I do not ask him to be generous; my only prayer is that he should be just. I seek justice, not compassion or consideration—not even the compassion or consideration of Sir John Woodburn.

And I think it is now time that I should recall to His Lordship that, before the Government of India brought all these charges against me, I had brought certain charges against them; and that there is a claim of mine to be met, not merely for reinstatement, but for substantial compensation; a claim set forth in the memorial enclosed with the Government of India's letter. And I would respectfully submit that in estimating that compensation His Lordship should not forget the way in which I have been treated on account of preferring the claim. For my case is the case of Narsingh Singh, of Chupra, over again.

And if I conclude by adverting to certain considerations of expediency, I would humbly ask His Lordship to bear in mind that their introduction has no personal reference to himself; that for all I know Lord George

Hamilton may be perfectly ready to dispose of these matters on the merits; but that I know nothing of him, and that whether rightly or wrongly I believe that the merits are not the only, nor the chief, consideration which the average politician takes into account.

Logically, there can be no question that the alternative before His Lordship is whether he shall get rid of me, or of Sir John Woodburn, Sir Francis Maclean, and Lord Curzon of Kedleston. And as His Lordship is not at all likely to do the second, nor, do I suppose, is he prepared to deny the major premise, that if these three officials are in the wrong they should go; the only course left is to deny the minor premise, viz., that they are in the wrong. And the solution which would almost inevitably suggest itself, I do not say to His Lordship, but to a good many Secretaries of State, would be to direct the Under Secretary, or some other subordinate, to make out the best case he can for getting rid of me. The conclusion once regarded as inevitable, all that remains is to find reasons for it.

This being so, I think it as well to suggest that perhaps the conclusion may not be inevitable. For my case is, not that Sir John Woodburn is a liar, but that he has lied so clumsily and inartistically as to be found out; not that Sir Francis Maclean is a sycophant, but that his sycophancy has been so thoroughly exposed that for the future he will be a source of weakness, and not of strength; not that Lord Curzon is a hypocrite, but that he is a hypocrite unmasked. And public attention in India has been so focussed upon this case that I submit some doubt may reasonably be felt whether even for "the greater prevention of scandals" the most obvious course will necessarily be the best.

The policy of sitting on the safety valve has not proved so successful in the Chupra case that any one need be too ready to repeat it. Whatever is done to me, there remains the question of what should be done with the people I have exposed. The dilemma which confronted the High Court confronts His Lordship—the only difference is that some other people now stand by Sir John Woodburn's side.

When objection was taken before Mr. Geidt to one of the assessors, on the ground that he had talked over the case, Mr. Geidt rejoined that he did not believe there was an educated man in Bengal who had not talked over it. And what applies to Bengal applies, in not much less degree, to the rest of India.

On most of the questions I have raised, the Indian public have long since made up their minds, nor are their opinions in the least likely to be changed by anything except fresh evidence. The publication of the present correspondence will, to say the least, do my cause no harm with them. His Lordship's action on the materials now before him may affect their opinion of His Majesty's Government, but will certainly not affect their opinion on the merits of the case.

The Government of India, and the Government of Bengal, represent me as a malignant monster, ready to make the foulest charges, to utter the most malicious slanders, to tell any lie, for the gratification of my morbid vanity. They are under the necessity of saying such things. But their opinion of me is not shared by the public at large.

To their denunciations I will oppose but one single testimony—from one to whom, at the time, I was personally unknown, and who has avowedly formed his opinion of me from the same materials from which such very different inferences have been drawn by His Lordship's subordinate Governments. It is contained in a letter to myself from Mr. David Yule, published in "Capital," of March 28th.

> "Your judgments," he says, "lead me to infer that you would be the last man in the world to allow anything you may have said in error to go uncorrected."

Mr. Yule is the leading merchant in Calcutta.

To adopt the course proposed by the Government of India will be worse than a crime; it will be a blunder.

I am, &c.,
(Signed) A. PENNELL.

Enclosure A. to No. 5.

No. of Application. (1)	Name of Applicant. (2)	Date of Application. (3)	Description of the Documents. (4)	Certified. (5)	Uncertified. (6)	No. of Folios Used. (7)	Date of Preparation. (8)	Date of Delivery. (9)	Remarks. (10)
1	Basanta K. M.	1901. Feb. 16	Petition and Orders	3	—	5	1901. Feb. 16	1901. Feb. 16	
2	„ „	„ „	Proceeding and Warrant	1	—	2	„ „	„ „	
3	Mohim Ch. Moarumdz	„ „	Proceeding and Deposition	—	2	10	„ 22	„ 22	
4	Krishna Ch. Bhadra	„ „	„ „ „	—	2	18	„ „	„ „	
5	Rojoni Kanta Bose	„ „	Deposition	—	—	322	„ 28	„ 28	
6	Basanta Kumar Sen	„ „	Judgment	—	1	342	„ 27	„ 27	
7	Basanta Kr. Sen	„ „	Deposition	1	—	50	„ 21	„ 21	
8	Islam Manji	„ 19	Proceeding and Charge Sheet... ...	—	1	3	„ 22	„ 22	
9	Chand Myah	„ „	„ „ „ „	—	1	3	„ „	„ „	
10	Oli Manji	„ „	„ „ „ „	—	1	3	„ „	„ „	
11	Mahamed Amjad Myah	„ „	„ „ „ „	—	I	3	„ „	„ „	
12	Krishna Lal Naj	„ 22	Proceeding	1	—	2	„ 23	„ 23	
13	Radhakanta Aich	„ „	Deposition	—	3	19	„ „	„ „	
14	Krishna Ch. Bhadra	„ „	„	—	1	6	„ „	„ „	
15	Basanta Kumar Sen	„ 23	Map	—	2	—	„ 28	„ 28	
16	W. G. Reily	„ 25	„	—	1	—	„ „	„ „	

(Signed) J. C. Ghosh, Hd. C. C.

Enclosure B. to No. 5.

Letter from the Assistant Registrar of the High Court of Judicature at Fort William, in Bengal, to the Sessions Judge of Noakhali, No. 951, *dated Calcutta, the 4th March*, 1901.

SIR,

The Court having, on a review of the Sessions Statement of the division of Noakhali for the month of January, 1901, been pleased to call for the record of the case noted in the margin, I am directed under Section 435 of the Code of Criminal Procedure to request that you will deliver the record now in your possession to Mr. Sheepshanks, officiating Registrar of this Court, forthwith.

HIGH COURT.
Criminal.
PRESENT—
The Honourable Mr. Justice Ameer Ali and the Honourable Mr. Justice Pratt, two of the Judges of the Court.
The King Emperor *v.* Sadak Ali and others. Accused convicted under Section 302 Indian Penal Code and sentenced by the Sessions Judge of Noakhali on the 15th February, 1901.

I have, &c.,
J. LEWIS,
Assistant Registrar.

Enclosure C. to No. 5.

MY DEAR PENNELL, 4, Middleton Street, March 2.

WILL you come and dine with us to-morrow (Sunday) at 8.15, and if your sister is with you I hope she will forgive the want of formality in this invitation and come too.

Yours, &c.,
E. P. CHAPMAN.

Enclosure D. to No. 5.

Affidavit.

I, Mabel Florence Pennell, do hereby make oath and say:

1. That on the evening of the 2nd March my brother, Aubrey Percival Pennell, received from Mr. Chapman an invitation to dinner on the evening of the 3rd March.

2. That yesterday Mr. Chapman called at the Hotel Continental and saw me between the hours of eleven and twelve o'clock, and after staying some time went away. Mr. Chapman, on saying good-bye, said "I must go and look your brother up. I want to see him about some records."

3. That later on in the afternoon my brother showed me a letter from the Chief Justice, of which Exhibit A. is a correct copy.

4. That later on my brother showed me a note which he was sending to Mr. Chapman to the effect that my brother and I did not want to compromise Mr. Chapman, and would like Mr. Chapman to say if he would prefer we did not dine with him.

5. That we dined last night with Mr. Chapman.

6. That my brother has informed me that he has been, this morning, to see Mr. Chapman, and that the latter declined to admit, in writing, that he ever came to see my brother at all. My brother has, therefore, requested me to swear this Affidavit.

MABEL FLORENCE PENNELL.

The declarant known to me:

C. M. GUHA,
Judge's Court, Noakhali.

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xhibit A.

March 3, 1901.

The Chief Justice of Bengal is unable to see Mr. Pennell, and desires that any communication he may wish to make should be made to him through the Registrar of the High Court.

MABEL FLORENCE PENNELL.

Solemnly affirmed before me this day:

R. K. SARKAR,
Commissioner of Affidavits.

Judge's Court, Alipore, March 4, 1901.

Enclosure E. to No. 5.

MY DEAR PENNELL, 4, Middleton Street, March 3, 1901.

You don't, I presume, regard my invitation to dinner this evening as in any way authorising you to disregard any order which the Government may pass in the matter of your remaining in Calcutta without leave. I should like to know that your coming to dinner will not interfere with your returning at once if you are ordered to do so.

Yours, &c.,

E. P. CHAPMAN.

I don't know when the trains go.

Enclosure E. 1.

MY DEAR PENNELL, March 3, 1901.

PLEASE come and dine with your sister.

Yours, &c.,

E. P. CHAPMAN.

Enclosure F. to No. 5.

Affidavit.

I, Chandra Mohan Guha, son of Ram Kumar Guha, deceased, Serishtadar, Judge's Court, Noakhali, at present residing in Hotel Continental, Calcutta, do hereby solemnly affirm that yesterday, at about 3.30 p.m., I accompanied Mr. Pennell, District and Sessions Judge of Noakhali, to the house of the Chief Justice of the High Court, Calcutta (No. 14, Loudon Street). We took the Records of the Sessions case, Empress *v.* Sadak Ali and others, with us, and the Sessions Moharir Ali Hyder was also with us. Mr. Pennell sent one card first, and then another card with something written on it. A letter came, but no interview was allowed.

I do hereby affirm that the above statement is correct to the best of my knowledge.

CHANDRA MOHAN GUHA,
Serishtadar, Judge's Court, Noakhali.

Dated, Calcutta, March 4, 1901.

Enclosure G. to No. 5.

Affidavit.

I, Ali Hyder, son of Munshi Aliazzaman, deceased, Sessions Clerk, Judge's Court, Noakhali, at present residing in Hotel Continental, Calcutta, do hereby solemnly affirm that yesterday, at about 3.30 p.m., I accompanied Mr. Pennell, District and Sessions Judge of Noakhali, to the house of the Chief Justice of the High Court, Calcutta (No. 14, Loudon Street). We took the Records of the Sessions case, Empress *v.* Sadak Ali and others, with us, and Serishtadar of the Judge's Court, Noakhali, Babu Chandra Mohan Guha was also with us. Mr. Pennell sent one card first, and then another card, with something written on it. After a long delay a letter came, but no interview was allowed.

I do hereby affirm that the above statement is correct to the best of my knowledge.

ALI HYDER,

Sessions Clerk, Judge's Court, Noakhali.

Dated, Calcutta, March 4, 1901.

Enclosure H. to No. 5.

(Private.)

MY DEAR PENNELL, Rangoon, December 23, 1894.

I HAVE received the copy of your letter with form O/O, F., 19th (it only came last night). I think that will be all that is necessary, and that you will be able to get away very soon now. There was no harm in your asking to go to Moulmein, and I had no hesitation in putting up the matter for orders, but you will, no doubt, understand it was necessary to ascertain first whether all points under reference had been cleared up to Commissioner's satisfaction, and orders complied with. It would not have done for you to leave and then to find that something had been overlooked, necessitating your return. You will find the Chief Commissioner not at all obdurate, I am sure, and you will have noticed, I hope, with pleasure, that he gave you credit publicly for the really excellent results you showed as regards crime. I am only sorry that the unfortunate business should have happened at all, and spoilt the end of your stay in Burma, which began, I hope, not unpleasantly. With best wishes for the New Year.

Yours, &c.,

H. THIRKELL WHITE.

Enclosure J. to No. 5.

Chief Secretary's Office, Rangoon,

MY DEAR PENNELL, January 23, 1896.

ORDERS on your claim were passed a little while ago, and are doubtless on the way to you. So far as I remember these were favourable, but it was a Revenue Secretary's case. I will see that the orders go to Scott, if not already issued. Very glad to hear that you are flourishing in Bengal. (I expected no less), and hope to see you as you pass through. I dare say you heard that a Throngwa Thugyi distinguished himself lately by stabbing McKinnon—recently joined civilian. It was a bad job (so to speak), but McKinnon's doing all right, and is now so far as can be seen out of danger.

Hope you will have a pleasant furlough. I shall probably be home either for short or long leave some time this year, and we may meet.

Yours, &c.,

H. THIRKELL WHITE.

Enclosure K. to No. 5.

(Confidential.)

From Mr. A. P. Pennell, Deputy Commissioner, Maubin, to the Commissioner of Irrawaddy Division, Camp Myaungmya, dated Maubin, General Department, No. 3790/P., the 6th of December, 1894.

In reply to your endorsement, No. 1/2, C. 21, dated 3rd December, 1894, conveying the orders of the Chief Commissioner placing me under suspension, I have the honour to say that I withdraw my letter, No. 2273/1, dated 19th October, 1894.

2. Further, that I apologize to Mr. Thirkell White, Chief Secretary to the Chief Commissioner, for any statements contained in that letter in any way reflecting upon himself. It has now become abundantly clear that certain imputations which I made against Mr. White are, in point of fact, untrue, and this being the case, I desire to express my extreme regret for having made them.

3. In the withdrawal of my letter the withdrawal of the charges therein made against Mr. Carstairs is included. I do not desire to press any of those charges.

4. The grounds on which I suspended Mr. Carstairs were that he refused to go to the jungle, and that the reason which he put forward for the refusal was, in my opinion, insufficient.

My opinion was based upon—

1. My own observations of Mr. Carstairs' condition on the day in question, and for some days previous.

2. The unsatisfactory nature of the medical certificate which he produced.

3. The fact that he had previously evinced great reluctance to do field work. I considered, as a matter of fact, whether my opinion was justified or not, that Mr. Carstairs was malingering, and in deciding how to deal with his real or supposed malingering I was much influenced by my belief, based partly on personal observations, partly on the reports of others, that Mr. Carstairs was in every respect a very bad bargain as a Government Officer.

5. I do not now say that Mr. Carstairs was malingering, nor do I say that he is a bad bargain. I merely say that these were the reasons which I had for suspending him.

6. In the letter from the Chief Secretary, of which a copy is forwarded with your endorsement under reply, an explanation of my conduct is called for. I presume that this refers to the charge of disobedience to use (*sic*) the orders contained in the Chief Commissioner's Note. The order to reinstate Mr. Carstairs was at once carried out. The reason for my failure to comply with the remaining orders conveyed in the Chief Commissioner's Note was that it contained some very opprobrious charges against myself, which, as it is marked confidential, I am unable to refute, or even to detail. I feared that compliance with orders conveyed in such a manner might be ascribed to a consciousness of the justice of the charges which accompanied them.

7. The Chief Commissioner has alluded in the Note to which I refer to the fact that I am, or have been, in a state of nervous tension. This being so, I trust that it may not be thought inappropriate if I point out that during the past two years I have had somewhat more than the usual share of trouble and anxiety, and that the administration of the Thongwa District under present, and still more under past, circumstances has imposed a severe strain upon my physical strength. It may well be that certain of my actions which, at the time when I performed them, or even now, seem to me right and proper, may hereafter appear in a different light. But be that as it may, I trust that the Chief Commissioner will bear in mind, when considering my conduct, that he is considering my conduct under abnormal conditions.

I have, &c.,

A. PENNELL, C.S.,

Deputy Commissioner.

Enclosure L. to No. 5.

GENERAL DEPARTMENT, No. 201/2/C. 21.

(Complaints.)

Dated, Myaung, 9-18 of December, 1894.

Copy of the following, and its enclosure in original, forwarded to Mr. A. P. Pennell for information and guidance.

G. L. WEIDEMANN,
Officiating Commissioner of the Irrddy. Division.

Letter from the Chief Secretary to Chief Commissioner to the Commissioner of Irrawaddy, No. 517/7/C. 29, dated the 14th December, 1894.

I am directed to return the enclosure of your letter, No. 74/2/C. 21, dated the 8th December, 1894, and to request that it may be returned to Mr. Pennell with the intimation that the Chief Commissioner cannot receive his explanation unless it is couched in temperate and respectful language. Paragraph 6 of the letter is an aggravation of Mr. Pennell's original offence.

2. I am to observe that there is no record in this Office to show that my letter, No. 873/7/C. 29, dated 26th October, or the Chief Commissioner's Note therein enclosed, was marked "confidential." If either of these papers was so marked it was a clerical error, which I am to request you to correct. Except in so far as he has desired to spare Mr. Pennell needless exposure, there has been no wish on the part of the Chief Commissioner to treat his orders, in this case, as confidential.

I have, &c.,
H. THIRKELL WHITE,
Officiating Chief Secretary.

True Copy.
MAUNG PE NE,
Clerk,
Irrawaddy Commissioner's Office.

Enclosure M. to No. 5.

To COMMISSIONER, Irrawaddy Division, No. 4083/P.

(Confidential.)

SIR,

I HAVE the honour to solicit a reference to the correspondence ending with my letter, No. 3790/P., dated December 6, 1894, concerning my suspension.

2. It has been pointed out to me that paragraph 6 of that letter, which contains my explanation of my failure to carry out the Chief Commissioner's orders, is insubordinate and improper. As it is out of place for me to comment upon the Chief Commissioner's conduct, or the manner in which he conveys his orders, under these circumstances I apologize for having written that paragraph, and solicit permission to withdraw it.

3. I have nothing further to urge by way of explanation or extenuation of my conduct, and all that remains for me to do is to submit myself to the Chief Commissioner.

(Sd) A. P. PENNELL,
19th December.

Enclosure N. to No. 5.

(No. C. 19/12.)

(Private.)

MY DEAR PENNELL, Government House, Rangoon, December 23.

YOUR Note reached me after we had started, and I carried off your draft. I wired, approving it, from Dedaye, and hope you were able to indite a duplicate. I return the original. On your statements, no doubt, Maung Pe behaved badly, but fining is not a proper punishment for a Deputy Commissioner to inflict on a subordinate Magistrate. It may be usual in Burma, but I don't like it. However, I shall not interfere unless he appeals to me officially.

I have arranged to provide you with a full staff. Thompson and Clarke will change places at once. Field, on his return from leave, will be posted to Maubin. You can use either him or Thompson as Subdivisional Officer; and we will give any powers required. Dawson will remain; Field joins on 18th August.

A Myook for grazing grounds will be sent you. Keyam Nyim (?) is to go to you as Treasury Officer from Henzada. Maung Shwe Bu, E.A.C., goes to you as Atwinwoon. Both these are good men.

Matthews will relieve you of Munro's case. Now please set to work to clear off arrears, and, above all, send in your Revenue report as quickly as you possibly can.

Confine yourself, in your reply to Commissioner's call for explanation of the past 3 months, to the barest statements of facts and reasons. Don't argue, or go in for colouring, or personalities. I have heard all you have to say, and understand you, perhaps, better than others do. Please, however, tell me in confidence if you mean to revert to Bengal in November or not.

Yours, &c.,
A. MACKENZIE.

Enclosure O. to No. 5.

MY DEAR PENNELL, Darjeeling, October 15, 1895.

IN reply to your letter of the 3rd October, I write to let you know that Mr. Carnduff has been appointed to act as Judge of Beerbhoom as soon as he is relieved of his appointment in the Legislative Department. On Mr. Harvey James's return from leave on the 2nd November, Mr. George Gordon will then relieve you of the additional Judgeship of the Eastern Districts, and you will be posted to act as Magistrate and Collector of Rangpur. I see you talk of taking furlough in the beginning of February, but I hope you will be able to wait till the middle of March, if this would prove more convenient to Government, but this question of date we shall be able to arrange definitely about Xmas time.

I am, &c.,
H. J. S. COTTON.

A. P. Pennell, Esquire,
Officiating Additional Judge.

Enclosure P. to No. 5.

MY DEAR PENNELL, Darjeeling, November 16, 1895.

I AM sorry for the cancelment of the orders in your case, but we could not help it; they were due to the decision at the eleventh hour by the Government of India that Carnduff was to remain in the Legislative Department. I

think you must expect to remain in your present office till you go on furlough in the spring, but if there is a chance of transferring you I will let you know at once. In the meantime I can only say that your having officiated as a Judge by no means pledges you to join the Judicial Service.

I am, &c.,

H. J. S. COTTON.

Enclosure Q. to No. 5.

MY DEAR MR. PENNELL, Calcutta, February 28.

YOU will be attached at first to the Office of the Comptroller of India Treasuries here, and we should like you to join by 10th-15th March if possible.

If it will be any convenience to you I can put you up for a short time at 1 A, Outram Street, but as you know I shall leave for Simla at the end of the month. I was induced to get you into the Finance Department, which offers greater opportunities than other public Department, by hearing about you from Colonel Le Mesurier. If you will only make good use of your time, and get a grip over the *principles* of finance and accounts, you will find the result in future years.

Let me know when to expect you.

E. J. SINKINSON.

Enclosure R. to No. 5.

Office of Comptroller and Auditor-General,
The Treasury, Calcutta, dated the 14th December, 1898.

MY DEAR PENNELL,

I WILL let you know as soon as anything is settled. Meanwhile I am glad you have let me know you could come to us if we want you. I am not sure, however, whether you know that the vacancy will be for only three months, as Finlay will return to duty by the end of March. The papers say that Lawrence will come here. I rather suspect he will beg off; in that case Branson would move here. We have a civilian D.A.G., Clegt, who could act A.G. for 3 months.

If you were asked to act at Allahabad it would probably be as junior to Michael, now A.G.B., who belongs to 1887.

If anything I have written leads you to modify your views let me have a wire.

Yours, &c.,

A. F. COX.

Enclosure S. to No. 5.

Bengal Secretariat, Darjeeling,

MY DEAR PENNELL, November 2, 1898.

I SPOKE to-day to Edgar, and showed him your letter of the 30th, about going to Buxar. He said that you had probably heard by this time that you had been specially selected to go to Burma, on a personal application, twice made by the Viceroy himself to the Lieutenant-Governor, to send two of the best of the junior men in Bengal; you and Monahan have, therefore, been

chosen. There is a good opening there for ability, and you will have ample opportunity of showing your ability. I hope it will suit you, and that you will prosper there.

Yours sincerely,

C. E. BUCKLAND.

I shall not be down in Calcutta until the 13th, and leave on the 19th for England.

Enclosure T. to No. 5.

(No. 518/7, L-2.)

MY DEAR PENNELL, Secretary's Office, Rangoon, 1893.

I AM desired to inform you that the Chief Commissioner intends to appoint you to act as Director of L.R. and A. from the 15th June, or thereabouts, until early in September, when Matthews will take your place.

You will hold the appointment of settlement Officer jointly with the appointment of D.L.R.A.

Yours sincerely,

C. S. BAYNE.

Enclosure U. to No. 5.

(No. 90/28/8.)

Revenue Secretary's Office, Rangoon,

MY DEAR PENNELL, June 5, 1894.

I AM desired to forward herewith, for your information, a copy of a Resolution* which has been issued under Sir Alexander Mackenzie's orders on the subject of your Amherst Settlement Reports.

Yours sincerely,

C. C. LOWIS.

A. P. Pennell, Esquire,
Deputy Commissioner, Maubin.

Enclosure V. to No. 5.

MY DEAR PENNELL, S.S. "Sladen," 1893.

A LINE to let you know that I have received your letter, and sent for the papers, but that there will be some little delay, as I am at present on the way up to Bhamo with the Viceroy.

I am sorry you want to leave Burma. I am afraid it will not be possible for the Chief Commissioner to let you go till your time is up, as we have been making the strongest representations to India about the insufficiency of our staff, and we should be stultifying ourselves, and should probably seriously injure our prospects of getting the Commission strengthened, if we were to volunteer to give up an experienced officer like yourself.

However, I will look up the papers verifying the terms upon which you came to us, and send you a further reply in due course.

Yours sincerely,

E. S. SYMES.

I may mention that Courneuve speaks in the highest terms of the assistance he receives from you.

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* *Vide infra*, page 154.

Enclosure W. to No. 5.

(No. 678/1 C./7.)

MY DEAR PENNELL, December 20.

THE Chief Commissioner desires me to let you know that he hopes to re-appoint you to be a Deputy Commissioner, 4th grade (permanent), and to give you the charge of a District from the beginning of April next, when there will be a vacancy consequent on the retirement of Macrae. This news may, perhaps, affect your views with regard to taking leave, or, perhaps, even with regard to applying for retransfer to Bengal.

The Chief Commissioner will, I know, be sorry to lose your services in this Province. I am sorry you find your present work uncongenial. It won't be so bad when you get a District of your own.

Yours sincerely,

E. S. SYMES.

Enclosure X. to No. 5.

Chief Secretary's Office, Rangoon,

(No. 266.)

MY DEAR PENNELL, December 10.

A LINE to let you know that the Chief Commissioner proposes to transfer you next month to the charge of the Thongwa District, which, as you no doubt know, is considered one of the most important districts in Lower Burma.

You will probably be relieved at Pakokku by Symns, who is due here on the 15th instant, and you would make over charge to him on such date as will enable you to take charge at Maubin on about the 10th March. You will get your pucka stop on the retirement of Macrae, in April.

Yours sincerely,

E. S. SYMES.

Enclosure Y. to No. 5.

(Government of Bengal.)

MY DEAR PENNELL, Darjeeling, September 18.

I WRITE this letter to reach you at Bombay. The Lieutenant-Governor has decided to post you to Mymensingh, from which Anderson goes on furlough, and the orders have been gazetted. A strong Judge is wanted there. After your long rest you are likely to deal with the heavy work more effectively than most of our Judges. I am much afraid that you will have to put up with poor accommodation, the earthquake having damaged the Judge's house past repair. I have requested the Public Works Department to have the circuit house range repaired as quickly as possible, and hope that you will find accommodation there. Please communicate with Anderson soon after your arrival, informing him on what date he may expect you. You had better wire.

Yours sincerely,

C. W. BOLTON.

(Relating to Enclosure V., *ante*.)

Extract from the Proceedings of the Chief Commissioner, Burma, in the Revenue Department, No. 2S.—8, dated the 1st June, 1894.

Read—

Letter, No. 504-346 R., dated the 15th June, 1893, from the Financial Commissioner, submitting the Report on the Settlement Operations in the Amherst district for the season 1891-92.

Read also the report, and the following papers reviewing and commenting on it:—

(1.) Note by the Director of Land Records and Agriculture, dated 29th April, 1893.

(2.) Review by the Financial Commissioner, dated 11th May, 1893.

(3.) Note by the Officiating Chief Commissioner, dated 18th June, 1893.

Resolution.—The attention of all officers concerned is invited to the Report on the Settlement Operations in the Amherst district for the season 1891-92, which was submitted to this office under cover of the Financial Commissioner's letter, No. 504-346 R., dated the 15th June, 1893. There are a number of points in that Report which the Chief Commissioner fears may be overlooked unless they are now taken up and dealt with on a systematic principle. Some of these points have been touched upon in the Financial Commissioner's review of the Report, dated the 11th June, 1893, and in the Officiating Chief Commissioner's Minute of the 18th of that month, but Sir Alexander Mackenzie believes that unless some definite steps are now taken to deal separately with each and all of the points on which action is required, there is a danger of their being lost sight of. The following orders are accordingly communicated in regard to these matters, which are detailed in the succeeding paragraphs of this letter.

Paragraphs 53 and 54.—In these paragraphs Mr. Pennell deals with the question of drainage projects, and the silting up of drainage channels. The Public Works Department has been asked what action is being taken in the matter of the preparation of large drainage projects in the Amherst district. Meanwhile, however, the necessity for less ambitious drainage schemes should be kept in view. The Commissioner of the Tenasserim Division should submit a Special Report on the subject of the silting up of drainage channels, and proposals for remedying defective drainage.

Paragraph 67.—In the latter portion of this paragraph the Settlement Officer comments on the desirability of applying the proceeds of the District Cess Fund to the improvement of the water-supply in rural tracts. As regards this point the Commissioner should report what steps he proposes to take to utilize District Cess Funds in improving the water-supply.

Paragraphs 74 and 75.—In these paragraphs the subject of cattle-paths and grazing-grounds is dealt with. The Chief Commissioner observes that the Financial Commissioner has requested the Commissioner to report what measures he proposes to adopt to keep the approaches to watering-places and pastures open, and to protect grazing reserves. Sir Alexander Mackenzie wishes this matter to be thoroughly taken up. He desires that the result of the reference to the Commissioner may be reported, and that he may be favoured with the Financial Commissioner's matured opinion on the Settlement Officer's proposal to insert a provision in the rules under the Land and Revenue Act requiring thugyis to periodically inspect grazing-grounds and cattle-paths in their circles.

Paragraphs 78 and 79.—With regard to the points raised in these paragraphs, the Chief Commissioner would be glad to learn from the Financial Commissioner whether steps have been taken for the final allotment of grazing grounds, and whether any action has been taken on the suggestion that

in settled tracts, where grazing-grounds have been allotted, Township Officers should be prohibited from rejecting applications for grants on the ground that the land is required for grazing, unless they have personally satisfied themselves that such is the case.

Paragraph 80.—With reference to the Settlement Officer's remarks on the subject of cattle-breeding, the Financial Commissioner is requested to report what steps are being taken to improve the breeds of cattle in the province.

Paragraphs 81-84.—The necessity for revising the fishery arrangements of the Amherst district, which is dwelt on in these paragraphs of the Settlement Officer's Report, has been endorsed by the Financial Commissioner, and the Officiating Chief Commissioner. This revision should be made a distinct case in the Financial Commissioner's Office, and should be thoroughly worked out.

Paragraph 90.—With regard to the comments made by Mr. Pennell in this paragraph on the subject of the maintenance and repair of communications, the Commissioner of the Tenasserim Division is requested to report what is being done to provide bridges on country roads from District Cess Funds. It is extraordinary that there should be no list of roads in the Amherst district office. The matter should be looked into at once.

Paragraph 122.—The remarks made by the Settlement Officer in this paragraph appear to call for enquiry on the part of the Financial Commissioner into the Excise arrangements of the Amherst district. The Chief Commissioner trusts that the matter has received full attention.

Paragraph 140.—In connection with the Settlement Officer's remarks regarding freehold grants, the Chief Commissioner wishes the matter of the Sutherland grant to be fully enquired into and reported on. Sir Alexander Mackenzie desires that the subject may not be left to be disposed of by the Commissioner, but that it may be dealt with finally in the Financial Commissioner's office. The whole of the leasehold grants referred to in paragraphs 139 of the Report should be carefully examined, and the office records on the subject should be put in order.

Paragraph 196.—It is to be hoped that this matter of the defects in the system under which grants are issued in the Amherst district will be taken up systematically, and in earnest. It is, the Chief Commissioner considers, one of very great importance. The Settlement Officer is, no doubt, sweeping in his denunciations, but it is a well ascertained fact that the revenue administration of Moulmein has, in the past, been atrociously bad, and that the local officers in past years were weak and incompetent. A general reform in every direction must be insisted upon. Chapter V. of Mr. Pennell's Report may be altogether out of place, but the Chief Commissioner trusts that proper steps have been taken to prevent the recurrence of the evils that he has brought to light. Sir Alexander Mackenzie thinks that it may be very well the case that the Directions to Settlement Officers in Lower Burma would be the better for revision and expansion. The matter is commended to the earnest attention of the Financial Commissioner.

Paragraph 244.—It would appear from the Settlement Officer's remarks on page 137 of the Report that the prices current are very carelessly prepared in the Amherst district. At a place like Moulmein the prices current of the principal millers and brokers might, the Chief Commissioner thinks, be used as a check on the official returns. The matter should be looked into.

The points raised in the different paragraphs of this Resolution should be dealt with separately by the officer concerned, and when the action taken on the orders now communicated is reported, each point should be made the subject of a separate communication.

Order.—Ordered that a copy of the above Resolution be forwarded to the Financial Commissioner, and the Commissioner of the Tenasserim Division, for information, and for the favour of necessary action.

Ordered also that a copy be forwarded unofficially to the Secretary, Public Works Department, for information in continuation of this office Memorandum, No. 589-2 S.-8, dated the 29th May, 1894.

By order of the Chief Commissioner,

C. C. Lowis,

Officiating Revenue Secretary.

Enclosure Z. to No. 5.

My Dear Pennell, 9, Elysium Row, March 6, 1900.

I shall send for Hari Charan Baral to-day, and see about your shares being registered. I also bought, lately, 25 shares in the Bowreah; but although the man took the money from me on the 27th of last month, he hasn't brought me the papers yet. I had commenced a letter to you yesterday, but had to tear it up, owing to frequent interruptions. I have one or two matters of importance to tell you, but as these things were told me in confidence I need hardly repeat that you will also treat my communication in the same light. It appears the Government of India sent a reference to the High Court against your now famous judgment in the Chupra case, with the object, it appears, of strengthening the hands of the Secretary of State against any possible attack in Parliament, or it might be to prejudice him against you, so that he may not, of his own account, take some action against the Government, and in your favour. The Judges were asked to pronounce an opinion upon your judgment in particular with regard to the strictures on the officials; they had two stormy meetings on the subject, and the very Judges whom you despised, on account of their want of stamina and lack of education in Europe, stick up for you, and all your brother civilians were bitterly opposed to you, and were in favour of reporting against you, but the facts of the case were too strong for them; old Chandy Madhub had got up the facts very well, and met Macpherson and Prinsep upon every point. Finally, it was decided to report to Government that apart from the fact that the language of your judgment was intemperate they had no other fault to find with it. Prinsep and Macpherson actually argued that your procedure in examining these officials was irregular, and when Ghose pointed out that the Deputy Magistrate had refused to give an explanation, they still said the examinations of these persons might have been avoided. The men who supported you were, Ghose, Bannerjee, Ameer Ali, Stanley, and the Chief Justice. Sale came in late, and we barely could understand what he did say on the subject, but it appears he said something without joining in the voting. The Indian Government further asked the Court what action they were taking against you, upon which a reply has been sent to the effect that they would communicate their views to you direct. Here is another piece of information for you: the Chief Justice said, privately, to Ghose that you have absolutely spoilt a good case by your intemperate language; that the facts were so strong that you could have simply crushed the executive by a mere narration of them in language more sober; there was some other reference against you by the Bengal Government with reference to some remark about some Canoongoes as a class, one of whom had given evidence before you, and the High Court had to condemn the language of your remark. Ghose told me all this in confidence, and asked me not to repeat anything to you, but as I may absolutely rely upon you, I don't mind his prohibition. Dyspepsia is not the only disease for which this is a bad country. I think there is another disease for which this country is more unsuitable. I mean for those people who suffer from "prickings of conscience." The Government of India must know you were absolutely right on the merits, but your judgment, if accepted by them, would mean an absolute condemnation of the system of Government which prevails in this country, and, therefore, you must be sacrificed in some way or other. The Government of Bengal send you to Noakhali on account of this case, and afterwards unblushingly declare that it was not due to that, but the exigencies of the service—only nobody has

yet explained why you, of all others, should be sacrificed to their so-called "exigencies." I shall, of course, write to you from time to time, but Saturday is my only free day, and I find that I have now to go to Muffussil in Criminal appeals very often on that day. I went to Arrah Saturday before last, and appeared before your friend, Hardinge.

Yours ever,

P. N. Roy.

Enclosure Z. 2 to No. 5.

7, Park Street, Calcutta,

DEAR MR. PENNELL, June 17, 1900.

PARDON my not replying to your letter of June 10th before. I think if your insomnia still troubles you, it is necessary that you should have a sea voyage. If you can get 10 days off for a change, go on one of the river steamers. On your return try the medicine again. If no better take leave.

Sincerely yours,

R. H. CHARLES.

Enclosure Z. 3 to No. 5.

DEAR MR. PENNELL, Patna City, October 23, 1899.

IT appears from the letter of Mr. Bolton, as well as from the last Calcutta Gazette, that you have been posted to Noakhali. Mr. Bolton writes to me that you will relieve me after the vacation. Please let me know what date I am to expect you at Noakhali? I have got my furniture there, which I should like to dispose of before leaving the place. I should like to know if you would purchase any of the furniture; you can see the furniture after your arrival at Noakhali. I hope to be at Noakhali on or about the 30th instant.

Yours truly,

S. NURVL HUDA.

Enclosure Z. 3a to No. 5.

BENGAL CIVIL MEDICAL DEPARTMENT, FORM No. 31.

Medical Certificate under Article 893, Civil Service Regulations.

I, Reginald S. Ashe, Civil Surgeon of Mymensing, do hereby certify that A. P. Pennell, of the Indian Civil Service, is in a bad state of health; and I solemnly and sincerely declare that, according to the best of my judgment, a change of air is essentially necessary to his recovery, and do therefore recommend that he may be permitted to proceed to Australia, and to be absent from his duties for the space of three months.

REGINALD S. ASHE,

Civil Surgeon.

Place—Mymensing,

Date—September 3, 1898.

Enclosure Z. 4 to No. 5.

Opinion on the Criminal Procedure Bill.

I do not propose to do more than comment briefly on such provisions of the Bill as appear to me open to adverse criticism or, at all events, susceptible of improvement. The great majority of the changes proposed are very obviously improvements, but for the most part they relate to comparatively unimportant matters, while some of the changes, which I consider changes for the worse, appear to me to be very important indeed.

Clause 10, paragraph (2).—I would add to this paragraph the following proviso:—

"Provided that no Magistrate shall be appointed to be an Additional District Magistrate, unless he has exercised the powers of a Magistrate of the first-class for ten years at least, or unless such Magistrate is a member of the covenanted Civil Service, and has exercised the powers of a Magistrate of the first-class for five years at least," and would amend the paragraph itself by substituting—

"A Magistrate" for "any Magistrate of the first-class," and

by omitting "for a period not exceeding three months." I may point out that even the amended section would be an addition to the powers which the Local Government now possesses.

I think there is a distinct danger that the supervision of criminal justice may be left to untried and inexperienced officers. Local Governments are apt to think, though, of course, they do not say, that any one is good enough to try criminal cases.

I think, myself, that section 407 is occasionally abused in the same way. In this important district the bulk of the District Magistrate's appeals are disposed of by a Deputy Magistrate, whom I consider to be hardly qualified for such important work.

It may be objected that the Local Government already have power to appoint a District Magistrate without any such limitation as I propose. But in the case of the District Magistrate the exercise of the power of appointment is safeguarded by the fact that a District Magistrate has to perform numerous other duties which the Local Government is apt to esteem more highly than the administration of criminal justice.

If care were taken that only competent persons were appointed, I see no reason for limiting the time of the appointment. It seems to me, indeed, that the limitation of the time of the appointment is mischievous, as it tends to divert attention from the qualifications of the person appointed. It will be thought that any one will do for three months.

Clause 115, subsections (*b*), (*c*), (*d*). I think that any one who is willing and able to furnish security for his good behaviour should be allowed the right to have that security taken in lieu of police supervision; to enact otherwise will be to place a terrible power of persecution in the hands of an unscrupulous Magistrate. A certain number of District Magistrates *are* unscrupulous. There is no appeal against their order to give security under the present law. It is now proposed that there shall be no appeal against their order for police supervision. Under the present law the rich enjoy a comparative immunity from oppression; the proposed law involves rich and poor in the same peril.

Clause 122.—I would much prefer to keep the words "for good behaviour." I do not think it safe to trust the Magistrate with this new power.

Clause 132.—I think the sanction of the Local Government should suffice in the case of persons other than Magistrates.

Clause 162.—The proposed change is a most mischievous one, and will improve returns at the expense of justice. It has long been settled law in

these Provinces that the accused are entitled to see these statements, and although the Allahabad High Court have recently ruled otherwise, I think that is rather a reason for making the present law clearer than for altering it. If the law is as the Allahabad High Court have just discovered it to be, the sooner it is changed the better. I would solicit a reference to the judgment of Aikman J., in the case referred to (I.L.R., 19, All., 390, vide especially page 418), and ask if any serious attempt has been made to answer his reasoning. I have had some years' experience in these Provinces, and have never known a single case when the inspection of the statements by the accused's pleader has done any harm, while I know many cases where that inspection has been vitally important for the ends of justice. It is all very well to say that the Judge can look at the Diaries, but the people who say this know very well that the average Judge won't, even if he had time, which he seldom has. I do not suppose that the Judge of Mymensingh refers to police diaries once in a year. As for the Magistracy, it must be remembered that most of these are only less interested than the Police in showing a large percentage of convictions, as they believe that their promotion will largely depend upon their doing so. I believe that there is, or was, a Departmental order forbidding Police Officers to refer to Diaries, which is practically equivalent to an order to them to forget, when in the witness box, everything which might tend in favour of the accused, and when an officer in the position of the Inspector-General of Police can issue such an order, it is not to be expected that native Deputy Magistrates will be much more scrupulous. The whole argument on the other side seems to me to be singularly opposed to English ideas of fair play. I think it sufficient to quote the language of Aikman J., in the case referred to—" If the accused, or his agent, be allowed to see what a witness for the prosecution is recorded to have previously said to the Police, this may materially aid him in his endeavour to prove that the witness is untrustworthy, and I see no reason why this assistance should be withheld from him."

Clause 225, paragraph 21, should be omitted.

The first paragraph is quite sufficient. If the error has, in fact, misled the accused, and occasioned a failure of justice, I see no reason why the error should not be rectified on appeal or revision.

It should be borne in mind that in the court of first instance the accused is frequently not defended at all, and that, perhaps, not in one case out of a thousand does he have really competent legal advice. To provide that objections to any matter connected with the charge shall be taken at the earliest opportunity is, under these circumstances, nearly equivalent to providing that such objections shall not be taken at all.

Clause 256, Clause 257.—It is indisputable that the privilege (? right) of cross-examination is often much abused, especially in the Courts of subordinate Magistrates; at the same time cases are frequent where cross-examination after charge is very necessary, even though a witness has already been cross-examined, and I do not think it safe to leave it to the Magistrate's discretion whether this second cross-examination should or should not be permitted. It seems to me that the best course would be to expressly provide that it should be discretional with the Magistrate to permit cross-examination before charge. The result would be that in the majority of cases no cross-examination would take place till after charge. The real reason why pleaders and muktears are so anxious to cross-examine before charge is, that a great many [Magistrates ?] are very unwilling to acquit the accused when they have once framed a charge; the connection between charge and conviction is as strong in their minds as the connection between betrothal and marriage in Germany. So well is this known, that when a charge has once been framed, it requires more strength of mind than the average Muktear or junior pleader possesses to refrain from calling witnesses, even though it may be really much against his client's interest to do so. Under the present law, the Magistrate insists upon cross-examination before charge, because he does not like to frame a charge unless he thinks himself pretty certain of convicting. If, however, it were the general practice to have no cross-examination till after

charge, the meretricious sanctity which, at present, attaches to the Magistrate's opinion that there is ground for presuming that the accused has committed an offence would disappear, for a Magistrate would have less difficulty in admitting that such opinion might possibly be a mistaken one if it were based merely on the examination in chief of the witnesses for the prosecution.

Clause 439, last paragraph, is, in my opinion, either superfluous or mischievous. Superfluous, if the accused has the right of appeal, for no Court of Revision is at all likely to interfere. It would refer him at once to the Court of Appeal. Mischievous, if the time for appealing has past.

It is not at all safe to assume, even in these provinces, that a man will appeal in every case when an unjust sentence is passed. Suppose it is a sentence of fine only. It may very easily be less expensive for him to pay the fine than to appeal to a distant Court.

In Burma there is a standing order that the District Magistrate shall call for a certain number of cases from his subordinate Magistrates in revision, with a view to redressing possible injustice. The inspection of the records which follows leads to constant references to the Judicial Commissioner.

The new provision would put a stop to this useful practice. No doubt revision in appealable cases, when no appeal is brought, is much less necessary in an advanced country, with a population so litigious as that of Bengal, than in a backward province like Burma, but cases will occur, even in Bengal, when such revision is expedient, and the Code is not confined in its operation to Bengal, but extends to Burma and other parts of India which are no further advanced.

Clause 526, paragraph 81.—The proposed addition is a most mischievous one. I do not know *by whom* it has been found necessary to give a discretion to a judicial officer in such a case. No doubt it is quite possible that the power of requiring a postponement may sometimes be abused, but it is a question of the choice of evils, and to leave any discretion in the matter to the Court is a far greater evil. In by far the greater number of cases such applications are made by the accused, because he is rightly or wrongly dissatisfied with the Court, and to leave it to the Court to decide whether such an application is made for the purpose of delay, or otherwise prejudicing the course of justice, is practically to make the presiding officer of the Court a Judge in his own case.

Enclosure Z.5 to No. 5.

(Calcutta. Exhibit 29. A. Pennell, J. August 23, 1899.)

(Confidential.)

MY DEAR PENNELL, Bengal Secretariat, December 7, 1897.

YOUR Note on the Criminal Procedure Bill, submitted on the 25th ultimo, in compliance with my request for your opinion, has been found, on perusal, to be so very objectionable in several places that it cannot be accepted and placed among the papers on the Bill.

The worst passages are these:—

(1.) "To enact otherwise will be to place a terrible power of persecution in the hands of an unscrupulous Magistrate. A certain number of District Magistrates *are* unscrupulous."

(2.) "As for the Magistracy, it must be remembered . . . . . it is not to be expected that Native Deputy Magistrates will be much more scrupulous."

(3.) "The real reason why Pleaders and Muktears . . . . . marriage in Germany."

These remarks assert members of your own Service to be unscrupulous, and make a similar imputation against other Magistrates. The gravity of re-

cording such an imputation in an official paper cannot be exaggerated. Elsewhere you observe (*a*) that Local Governments are apt to think, though they do not say, that any one is good enough to try criminal cases, and (*b*) that, if a certain amendment is made in the Code, it will be thought that any officer will do to act for three months as a District Magistrate. You also speak of the "meretricious" sanctity which at present attaches, &c. The language used in these passages is unbecoming in a Note submitted to the Government.

The Lieutenant-Governor, I am to say, is surprised that you should have permitted yourself to write as you have done. The remarks to which attention has been here drawn indicate, he considers, an extraordinary lack of the sense of responsibility in an officer of your standing, occupying the position of a District Judge. Your Note, if placed on record, might give rise to very serious unpleasantness, and to consequences unfavourable to yourself. It will accordingly be destroyed, and I am to desire that you will, without delay, destroy the draft, which should not remain in your file.

Yours sincerely,
C. W. BOLTON.

(Enclosures Z. 6 to Z. 10 not printed.)

Enclosure Z. 11 to No. 5.

SIR, Noakhali, April 8, 1901.

IN reply to your letter of April 5th, I write to say that, as far as I recollect, the only books that I took from your house were a Bengal Civil List of 1st October, 1900, and a history of services of Gazetted Officers. There was also some paper with the Judge's Office Docket. I forget what it was, and as my office is closed, I cannot now ascertain. I will send you, to-morrow, a complete list of all books and papers taken from your house, but I do not like to delay this letter, as you wish for an early reply, and I pass on to explain how I came to enter your house, and take these papers.

I learnt from my Sarishtadar that you had retained in your house, for your personal use, some Government property belonging to the District Judge's Office. There were, if I remember right, a couple of writing desks, some chairs, and a towel rack. I instructed the Nazir to obtain these articles from the servant in charge of your house, and remove them to the Cutcherry. As I was returning from my walk next morning, I saw a bullock cart at your door, and went to see that things were being done decently and in order. The Nazir, with one or two Coolies was there, as also your servant. I went into the house, saw the furniture that was to be removed, and told your servant to remove from your office table your personal belongings. As I was doing this, my eye fell on a Civil list, which I knew was a book that I had written to you about. Thinking that some other papers and books, which were said to be in your possession from my office, might be there, I glanced rapidly round, and found the History of Services, and the paper I spoke of, and (as I now remember) a map of part of the district hanging on the wall. These all seemed to belong to the office, and I therefore removed them. Your servant was present throughout, and I told him, when he should see you, or write to you, to let you know what I had done. I was not aware that there was any lady in charge of your house, nor did your servant inform me of the fact.

Yours faithfully,
B. G. GEIDT.

P.S.—Perhaps you will allow me to take this opportunity of calling your attention, for the third time, to the fact that there are still in your possession books, papers, and other articles belonging to my office.

A. P. Pennell, Esquire.

(Enclosures Z. 12 to Z. 16 not printed.)

Enclosure Z. 17 to No. 5.

To the Registrar, High Court, Appellate Jurisdiction.

SIR, Calcutta, March 8, 1901.

I HAVE the honour to state that I was formerly Sessions Judge of Noakhali, but was suspended on the night of the 4th instant. I have in my possession the record in the case of Emperor *v.* Reily, which I brought with me to Calcutta. A rule was issued by the High Court directing me, amongst other things, to submit this record on or before the 9th instant (to-morrow). So far as I know there is now no Sessions Judge of Noakhali, and I do not know what to do with the record. Under these circumstances I tender it to you with the usual form of receipt, and request that you will either take it over and sign the receipt, or will obtain and communicate to me the wishes or orders of the High Court with regard to its disposal.

I have, &c.,

A. PENNELL.

Enclosure Z. 18 to No. 5.

DEAR MR. PENNELL, Noakhali, April 22, 1901.

I HAVE been invited to go to the tea party offered in your honour.

Be sure, Dear Mr. Pennell, if I was alone, if I had nobody under me, whom I have to help in their welfare, by getting, from time to time, some situation in the offices of the Government, I would not hesitate at all to answer to the kind invitation, and to join myself ostensibly to the natives to say Good-bye to you, Dear Mr. Pennell.

I am sure, Dear Mr. Pennell, you will understand me, and my constrained shyness in this circumstance.

Again, and again, thanking you very much of your great charity towards my Christians, I bid you, Dear Mr. Pennell, a good voyage, a happy sojourn in Europe, and a prompt return to Bengal.

Yours sincerely,

A. FRANCAIS, C.S.C.,

Catholic Priest.

No. 6.

Letter from the Under Secretary of State to Mr. A. P. Pennell, No. J. & P. 1353, *dated India Office, 5th September*, 1901.

I AM directed to say that your communication of the 10th August has been considered by the Secretary of State in Council, in connection with the letter of the Government of India, of which a copy was furnished to you on the 29th June last, and that His Lordship has decided, for the reasons stated in that letter, that it is impossible that you should continue to be a member of the Indian Civil Service.

You voluntarily, and in defiance of a warning conveyed to you by direction of the Government of India that you were thereby violating clause 8 of your covenant, abandoned that service by quitting India without leave on the 15th May last; and Lord George Hamilton has directed that from that date your name shall be removed from the roll of its members.

The present orders dispose of your Memorial to the address of the Secretary of State, dated the 29th April last, in which you prayed for reinstatement in your office of Judge, and for compensation for the treatment to which you had been subjected.

I am, &c.,

(Signed) HORACE WALPOLE.

No. 7.

Despatch from the Secretary of State for India to His Excellency the Right Honourable the Governor-General of India in Council, No. 120 (*Public*), *dated* 13*th September* 1901.

Removal of Mr. A. P. Pennell from the Indian Civil Service.

I HAVE had under consideration in Council the letter of your Excellency's Government No. 54, dated the 30th May 1901, and its enclosures, regarding the conduct of Mr. A. P. Pennell of the Indian Civil Service, lately District and Sessions Judge of Noakhali in Bengal.

2. Learning that Mr. Pennell was in this country, and having regard to the nature of the recommendations contained in your letter, I thought it expedient to communicate with him and ascertain what, if anything, he had to urge against the adoption of the course proposed by your Excellency in Council.

3. Having now carefully considered in Council the letter of your Government and its enclosures, with Mr. Pennell's observations thereon, I entirely concur with your Excellency in holding that he cannot continue to be a member of the Indian Civil Service. As, moreover, in defiance of a warning conveyed to him by your Excellency's direction that he was thereby violating Clause 8 of his covenant, he abandoned that service by quitting India without leave on the 15th May last, I direct that from that date his name be removed from the roll of its members. Having regard to the attitude which he still maintains in the face of the grave charges proved against him, I also concur with your Excellency in Council in thinking that there is no ground for considering the question of granting him a compassionate allowance.

4. I have communicated this decision to Mr. Pennell, and informed him that the present orders dispose of the memorial to my address dated the 29th April last, forwarded with the Bengal Government's letter, No. 124 A.D., dated the 19th May, in which he asked for reinstatement in his office of Judge and for compensation for the treatment to which he had been subjected.

I have, &c.,

(Signed) GEORGE HAMILTON.

APPENDIX.

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CRIMINAL BENCH.

APPEAL No. 173 of 1901.

(NOAKHALI.)

PROCEEDINGS OF THE COURT OF SESSION.

In the case of

THE KING-EMPEROR ... ... *Complainant*

versus

SADAK ALI AND OTHERS ... ... *Accused.*

PART I.

Date fixed for hearing—The 28th March 1901.

Proofs compared by:
W. C. RABEHOLME, G. C. GHOSE, DAVID CARR and D. N. DAS.

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SUMMARY OF THE PROCEEDINGS.

Heading of Sessions Trials.

COURT OF SESSIONS JUDGE OF NOAKHALI.

Trial No. 1 of the Sessions for January, 1901.

Case No. 562 for 1900 of the Deputy Magistrate's Calendar for 1900.

Committing Officer.—Babu Kali Sankar Sen, Deputy Magistrate of Noakhali.

Trial held under Act X of 1882.

BABU ISHAN CHANDRA SEN, - - - - - - } *Assessors.*
„ CHANDRA MOHUN ROY, - - - - - - }

For Prosecution.—Government Pleader.

For Defence.—Babu R. K. Aich and R. K. Bose, *Pleaders.*

THE QUEEN,
versus
No. 1, SADAK ALI.
No. 2, ANWAR ALI.
No. 3, ASLAM.
No. 4, YAKUB ALI.

CHARGE.

Committing murder, Section 302, Indian Penal Code.

The 1st July, 1901.—The Assessors were chosen. Babu Radha Kanta Aich for the accused objected to one of the Assessors originally selected, Babu Amar Kristo Sen, and Babu Ishan Chandra Sen was therefore selected in his place.

The charge was read and explained to the accused, who pleaded not guilty.

The Government Pleader applied for warrants against some witnesses of whom all except one eventually appeared. It seems that by some negligence the witnesses were not bound down to attend this Court as directed by law. The Government Pleader says that the Court Sub-Inspector states that he took no recognizances because he was not ordered to do so. He is a Senior Officer and should have brought the matter to the notice of the Committing Magistrate if an order was required. Let a copy of this order be sent to the District Magistrate with the request that due notice may be taken of the failure to take recognizances It is the more necessary that I should bring the matter to his notice, as the conduct of several of the Police Officers seems to be very much in issue in this case.

A warrant will issue against the absent witness.

The Government Pleader opened the case for the prosecution. Examined witness No. 1, Idris Mia, in part and admitted Exhibits 1, 2 and 3 for the prosecution. Case adjourned to the 8th instant for want of time.

A. PENNELL,
Sessions Judge.

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2. The 8th January, 1901.—Case resumed. The warrant against Mahabat Ali has been returned unserved. Government Pleader states that he understands a peon has been sent to Hatia after this witness. He was informed by the Court that he could apply for further process if or when he thought it necessary. Examination of Idris Mia continued. It was not concluded when the Court rose for the day. Case adjourned to 9th January for want of time.

A. PENNELL,
Sessions Judge.

3. The 9th January, 1901.—Case resumed. The examination of witness No. 1, Idris Mia, completed. Examined witness No. 2, Hosain Ali, in-chief. He proves Exhibit No. 4 for the prosecution. At the request of the Pleader for the accused his cross-examination was deferred and it being past 4 p.m. the case was adjourned to the 10th January.

A. PENNELL,
Sessions Judge.

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4. The 10th January, 1901.—Case resumed. Owing partly to my writing a judgment at home, I did not attend Court till 11.40, and for various reasons, mainly connected with the quarterly returns, was unable to take up this case till 2 p.m. The witness No. 2, Hosain Ali, was then cross-examined. His examination was not completed till 4.40 p.m., when the case was adjourned to 11th instant.

A. PENNELL,
Sessions Judge.

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5. The 11th January, 1901.—Case resumed. Witness No. 3, Torab Ali, examined. Case adjourned to 12th January for want of time.

A. PENNELL,
Sessions Judge.

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6. The 12th January, 1901.—Case resumed. Witnesses No. 4, Islam, No. 5, Saroda Mohan Chakravarti, No. 6, Binod Bihari Pal (District Engineer), examined and Exhibit No. 5 admitted in evidence for the prosecution. Witness No. 4, Islam, complained after giving his evidence that he had been subjected to certain maltreatment while attending Court. The Senior Munsiff was asked to enquire into his complaint. Case adjourned till 14th January for want of time.

A. PENNELL,
Sessions Judge.

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7. The 14th January, 1901.—Case resumed. Examined witnesses No. 7, Abdul Aziz, No. 8, Abdul Aziz Mir, No. 9, Rajab Ali, No. 10, Abdul Mir, and No. 11, Ahmadullah for the prosecution. Witness No. 4, Islam (who was present in Court), re-called and further cross-examined. Case adjourned to 15th January for want of time.

A. PENNELL,
Sessions Judge.

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8. The 15th January, 1901.—Case resumed. Examined witnesses, No. 12, Kali Kumar Das, No. 13, Abdul Latif, No. 14, Ana Mir, No. 15, Hari Das Das, and read deposition of Civil Medical Officer and admitted Exhibits 6 to 22 for the prosecution. Ramdhan Barua, Constable, a witness for the prosecution, is not present. He is said to have gone on Dawk with the Deputy Inspector-General of Police. The District Superintendent of Police is also absent. Telegram sent to him directing him to return at once and bring Ramdhan Barua. Case adjourned for their evidence to 16th January.

A. PENNELL,
Sessions Judge.

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9. The 16th January, 1901.—Case resumed. Examined witness No. 16, Ramdhan Barua, re-called and further examined witness No. 1, Idris, and examined witness No. 17, Mohim Chunder Dey, and admitted Exhibits 23 and 24 (warrants) for the prosecution. Also admitted evidence of Mahabat Ali recorded by the Lower Court under Section 33 of the Indian Evidence Act. Examined in part Mr. W. Y. Reily, District Superintendent of Police, a witness called by the Court and admitted in evidence Exhibits 25A, 25B, 26A, 26B, 27A, 27B, and 27C, and Exhibits L1 to L62 inclusive (Special Diaries, etc.). The case is adjourned to 17th January for want of time.

A. PENNELL,
Sessions Judge.

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10. The 17th January, 1901.—Case resumed. Mr. Reily examined by the Court proves Exhibits B1 to B27 and Y1 to Y8 inclusive. His cross-examination by the pleader for accused commenced but not finished. Case adjourned to 18th instant for want of time.

A. PENNELL,
Sessions Judge.

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11. The 18th January, 1901.—Case resumed. Mr. Reily further cross-examined by the pleader for accused. He proves Exhibit A. He was then further cross-examined by the Government Pleader for the Crown and proved Exhibits Aa and Aa1. His examination having been concluded the translation of his deposition to one of the Assessors who does not know English, was commenced. It was not concluded when the Court rose for the day.

A. PENNELL,
Sessions Judge.

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12. The 19th January, 1901.—Case resumed. The translation of Mr. Reily's deposition was completed. The accused were then examined and their oral statements before the Lower Court (Exhibits 28, 30, 31 and 32) and a joint written statement filed by them in the Lower Court (Exhibit 29), were put in. On the accused being called on for their defence, Babu R. K. Aich, their pleader, put in an application for a view of the place of occurrence by the Judge and Assessors and was heard in support of it. As the place of occurrence is near the town, I think such a view desirable. It is arranged that Babu R. K. Aich shall provide the Assessors and the Government Pleader with a gari or garis, and come with them to my house at 7.30 a.m. to-morrow. The translator of this Court will also attend. We will then go to the various places mentioned in the course of the trial and return thence to Noakhali.

The further trial of the case in Court is adjourned till Monday the 21st instant.

A. PENNELL,
Sessions Judge.

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13. The 21st January, 1901.—Yesterday I visited the place of occurrence with the Assessors, and we saw all the more important places, being engaged therein for a good three hours (apart from journey to and fro).

This day the case was resumed and witnesses No. 1, Kisto Chunder Bhadra, No. 2, Bharat Chunder Mozumdar, No. 3, Mohim Chunder Mozumdar, were examined for the defence. The further hearing was adjourned till the 22nd. The witnesses for the defence are told that they are not to leave the Court till judgment in the case has been delivered.

A. PENNELL,
Sessions Judge.

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14. The 22nd January, 1901.—Case resumed. Examined witnesses, No. 4, Amjad Mir, No. 5, Ali Manjhi, No. 6, Islam Manjhi, No. 7, Afsaruddin, No. 8, Chand Mir, for the defence. The pleader for the accused intimated that he closed his case. Adjourned to 24th instant for arguments.

A. PENNELL,
Sessions Judge.

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15. The 24th January, 1901.—The pleader for the defence was heard. The case is adjourned till the 25th for want of time, and as the 25th is Sri Panchami it will be taken up then at 7 a.m.

A. PENNELL,
Sessions Judge.

16. The 25th January, 1901.—Heard a few more words from Babu R. K. Aich for the accused. Heard Government Pleader for prosecution. The Assessors on being asked for their opinions, requested leave to consult. They were allowed to consult in my private room and after about five minutes returned and gave their opinions which were recorded—that Sadak Ali, Aslam and Anwar Ali were guilty and Yakub Ali not guilty. Case adjourned to 28th January for judgment.

A. PENNELL,
Sessions Judge.

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17. The 28th January, 1901.—The judgment in this case is not yet ready, and at the rate I am writing it, it is not likely to be ready to-morrow. The case is, therefore, adjourned till the 30th instant. The defence witnesses must attend on that day.

A. PENNELL,
Sessions Judge.

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18. The 30th January, 1901.—The judgment in this case is not yet ready and is not likely to be ready to-morrow. The case is, therefore, adjourned to the 1st February.

On the 28th instant I received from the Chief Secretary to the Local Government in the envelope marked Exhibit X19 the letter marked Exhibit X18 and despatched yesterday to him the telegram of which Exhibit X20 (on the back of Exhibit X18) is a copy.

Under Section 26 of the Criminal Procedure Code the Local Government has power to suspend or remove me from office.

So far as I know there is no reason why my second letter of the 31st December to Mr. Buckland, of which Exhibit X14 is a copy, should have "turned up again" just after the two Hindu Assessors had found three of the four accused guilty of murder, and after I had directed the European District Superintendent of Police, whom the Government Pleader had charged to his face with gross perjury, to attend Court till the judgment in the case was delivered.

It seems to me that the matter may be something more than a coincidence, and that it may be an attempt on the part of the executive authorities to intimidate me. I have received no reply to my telegram to the Chief Secretary. For my own protection in doing my duty I file with the record, after duly marking them, the whole of the correspondence ending with Exhibit X20. (It is marked as Exhibits X1 to X20 inclusive, Exhibit X8 is in three pieces, marked Exhibit X8a to X8c).

A. PENNELL,
Sessions Judge.

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19. The 31st January, 1901.—The District Magistrate wrote yesterday asking for copies. I have replied that copies will be furnished before the papers are transmitted to the High Court.

No reply has been received from the Chief Secretary. Filed affidavit of Peshkar concerning the despatch of telegram on the 29th instant.

The failure of the Chief Secretary to reply to that telegram tends to confirm the suspicions already expressed in the Court's order of yesterday. Let the following telegram be sent to him.

(Urgent State.)

From—Noakhali.
Sessions Judge.

To—Calcutta.
Chief Secretary.

Please wire whether you have received my telegram of 29th concerning your demi-official of 26th.

A. PENNELL,
Sessions Judge.

I, Prasanna C. Guha, Translator, Judge's Court, Noakhali, delivered to the signaller of the Noakhali Telegraph Office the telegram addressed by the Sessions Judge of Noakhali to the Chief Secretary, Government of Bengal, at 12.42 p.m. this day.

PRASANNA C. GUHA.

The 31st January, 1901.

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20. The 1st February, 1901.—The judgment in this case which has already run to 75 pages, is not yet ready. There is a good deal more to be written. To-morrow the Court will be closed on account of Her late Majesty's funeral and the day after is Sunday. The case is therefore adjourned till Monday the 4th February, when I hope to be able to deliver judgment at 11.30 a.m. I note that I have received no reply to either of my telegrams to the Chief Secretary to the Local Government.

Exhibit X21 (letter from Under-Secretary to Government of Bengal, forwarding Government of India's Resolution on the Chupra case) has been filed with the record.

A. PENNELL,
Sessions Judge.

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21. The 4th February, 1901.—I have left the order-sheet of the case at my house, so have to write this on a separate paper.

The judgment which has already run to 118 pages is not yet finished and will probably take some days more. As I shall have to deal with some very delicate matters and some people in very high positions, it is necessary that I should avoid any hasty expressions. The case is therefore adjourned to Thursday next, 7th February, when I hope to deliver judgment at 11.30 a.m.

Read letter No. 259, dated 1st February, 1901, from the District Magistrate, asking about what date he can send men to take copies. Replied that I will supply him with copies myself, and that they will be supplied with as little delay as possible after judgment is delivered.

Filed Exhibit X22 (letter from Mr. Cargill. the District Magistrate) enquiring if I had expressed a certain opinion as to the reason of his recent absence from head-quarters and Exhibit X23 (copy of my reply).

Let the District Magistrate be informed that I desire that any application he may wish to make to me with reference to this case or to his proceedings during the trial may be made to me through the Government Pleader in open Court.

A. PENNELL,
Sessions Judge.

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22. The 4th February, 1901.—Read letter No. 67, dated the 4th February, 1901, from the District Superintendent of Police—let the letter and the envelope in which it came (marked by me) be filed. Despatched letter No. 52 to the District Magistrate requesting him to direct Mr. Reily to obey the orders of this Court.

A. PENNELL,
Sessions Judge.

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23. The 7th February, 1901.—Yesterday the Government Pleader sent me an application for certain copies "under instructions from the District Magistrate." I replied by Memorandum No. 54 of that day.

To-day the Government Pleader on being questioned stated that the presentation of the application to my Office yesterday instead of filing it in open Court was a mistake of his own. He admitted that the *Serishtadar* at first declined to receive the application.

Judgment is not yet ready. It has already extended to 165 pages (approximately) and will probably run to 70 or 80 pages more.

The case is therefore adjourned for judgment to Monday, the 11th February, when I hope that the judgment will at last be finished. I intend delivering it then at 11.30 a.m.

Mr. W. Y. Reily will execute a personal recognizance bond for Rs. 500 (five hundred) to attend this Court on the 11th instant and on any subsequent date to which this case may hereafter be adjourned.

A. PENNELL,
Sessions Judge.

(It is noted that Mr. Reily is not now, 12.10 p.m., in attendance. He was sent for half an hour ago.

A. PENNELL,
Sessions Judge.

The 7th February, 1901.

N. C. GUHA.

The 7th February, 1901.

R. K. AICH.

The 7th February, 1901.

He arrived at 12.15 p.m. and executed the recognizance bond which was attested by the Senior Munsiff Babu Lalit Kumar Bose who, under my orders, was present throughout this day's proceedings.

A. PENNELL,
Sessions Judge.

The 7th February, 1901.

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24. The 11th February, 1901.—I am ill with my usual complaint and do not therefore attend Court. I have no doubt I shall be all right by to-morrow. Judgment is not yet quite finished, and I want to look through it before delivering it. The case is, therefore, adjourned, and the accused remanded till 15th instant.

A. PENNELL,
Sessions Judge.

25. The 15th February, 1901.—Judgment delivered. The accused Yakub Ali is acquitted and set at liberty. The accused Sadak Ali, Aslam and Anwar Ali are convicted of murder under Section 302, Indian Penal Code. Sadak Ali is sentenced to death and Aslam and Anwar Ali to transportation for life. The accused Sadak Ali has been informed that he must appeal to the High Court, if he desire to do so, within seven days.

Mr. Reily has been arrested and is committed to jail on charges under Sections 193, 466 and 471. Enquiry into the case against him will commence on the 25th instant.

The other witnesses for the defence must appear to-morrow, when necessary action will be taken. It is too late, 6.5 p.m., to take proceedings to-day.

A. PENNELL,
Sessions Judge.

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26. The 16th February, 1901.—Formal proceedings drawn up against Mr. Reily. The defence witnesses, Bharat Chunder Mojumdar and Afsaruddin, are discharged. The witnesses Amjad Mir and Ali Manjhi will give bail of Rs. 200. Each to appear before the Magistrate to answer to charges under Section 193 of the Indian Penal Code. The witnesses Islam Manjhi and Chand Mir will give bail of Rs. 200. Each to appear before either the Magistrate or the Court of Sessions to answer to charges under Section 193 of the Indian Penal Code. It is doubtful if they can be adequately punished by the Magistrate, but the state of the file of this Court is such that it will be difficult to make time to try them. The witnesses Kisto Chandra Bhadra and Mohim Chunder Mozumdar are Police Head Constables: it is necessary, in my opinion, that they should be committed to the Sessions, but as I am about to take proceedings in the capacity of Committing Judge against Mr. Reily, and their case is mixed up with his, it may perhaps be desirable that I should not try them myself. It is also highly probable that an Additional Sessions Judge will be sent here before long. It is, therefore, ordered that these two witnesses do give bail of Rs. 300, each to appear when called upon before the Court of Sessions to answer charges under Section 193, Indian Penal Code.

A. PENNELL,
Sessions Judge.

The 16th February, 1901.

CHARGE SHEET.

CHARGES WITH ONE HEAD

(Sections 221, 222, 223, Code of Criminal Procedure.)

I, Kali Sankar Sen, Deputy Magistrate, hereby charge you, No. 1, Sadak Ali, No. 2, Anwar Ali, No. 3, Aslam, No. 4, Yakub Ali, as follows:—

That you, on or about the 25th day of August, 1900, at Chur Uria, did commit murder by causing the death of one Islam Jagirdar and thereby committed an offence punishable under Section 302 of the Indian Penal Code and within the cognizance of the Court of Sessions.

And I hereby direct that you be tried by the said Court on the said charge.

Explained.

All the accused plead not guilty.

KALI SANKAR SEN,
Magistrate.

Dated at Noakhali,
The 7th day of December, 1900.

LIST OF WITNESSES.

Number of Prosecution Witnesses.

1. Idris Mia.
2. Hosan Ali.
3. Torap Ali.
4. Islam.
5. Abdul Aziz.
6. Mahabbat Ali.
7. Abdul Aziz Mir.
8. Rajab Ali.
9. Abdul Mir,
10. Ahamedulla.
11. Saroda Mohun Chuckerbutti.
12. Babu Binod Behari Pal, Engineer.
13. Babu Nobin Chunder Dutt, Civil Medical Officer.
14. Babu Kali K. Das, Pleader.
15. Abdul Latif.
16. Ana Mir.
17. Ramdhan Barua.
18. Haridas Das.

Number of Defence Witnesses.

1. District Superintendent of Police.
2. Bharat Chunder Sen, Police Inspector.
3. Osman Ali, Sub-Inspector.
4. Krishna Chunder Bhadra, Head Constable.
5. Mohim Chunder Mazumdar, Head Constable.
6. Safar Ali Master, Muktear.
7. Joshada Kumar Roy, Muktear.
8. Mahomed Amjad Mir, Panchait.
9. Hamidulla Mir.
10. Abu Salam.
11. Roshan Ali Chowkidar.
12. Gobind Churn Mohajan.
13. Eakub Ali.
14. Asrap Ali.
15. Mahomed Kolim Mir.
16. Shadak Ali.
17. Ali Manjhi.
18. Emrat Ali.
19. Abdul Majid.
20. Box Ali.
21. Roshan Ali, Patwari.
22. Fajar Ali.
23. Ibrahim.
24. Wali.
25. Kalamuddin Bepari
26. Jita Mir.
27. Umed Ali.
28. Abdul Majid Mir.
29. Amoarullah.
30. Abdur Rahman.
31. Tuka Mir.
32. Karamat Ali.
33. Abdul Aziz.
34. Abdul Karim.
35. Ismail Manjhi.
36. Boxi Mia.
37. Eakub Ali Manjhi.
38. Muslim.
39. Apsaruddin Bepari.
40. Ujjir Ali.
41. Abdu Salam.
42. Hosan Ali.
43. Aslam Jagirdar.
44. Mahomed Ennos Amin.
45. Ekramuddin.
46. Chand Mir Khalifa.
47. Fajalur Rahman.
48. Abdul Karim Bhuya.

KALI SANKAR SEN,
Deputy Magistrate.

DEPOSITIONS OF WITNESSES FOR PROSECUTION.

I.—Idris Mia.

The deposition of prosecution witness No. 1, aged about 17 or 18 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 7th day of January, 1901.

My name is Idris Mia. My father's name is Ismail Jagirdar. I am by caste Mussulman. My home is at Mouzah Chur Uria, Police Station Sudharam, Zilla Noakhali. I reside at present there, where I am taluqdar.

On the 9th Bhadro I was at home. My father was at home that morning. At 8 or 9 a.m., he started from home for Sudharam to attend Court. I saw him go. Our home is four miles from the town (Sudharam). He did not come home that night. Early next morning, a Sunday, I saw his dead body floating in the tank which is east of our *bari* and at the entrance to it. I had gone to the tank to wash my hands and face. On seeing my father's dead body I burst into tears. Naimaddin Miji, Abdul Aziz and Islam and many others came to the place. Islam and Abdul Aziz are different persons from my witnesses of those names. I wanted to take my father's body out of the tank. Osman Chowkidar came a little after—I mean that the persons I have named and many others came before him. Osman told me not to take up the dead body till the Daroga came. Osman told me to go to the Thana and lodge information. I went to the Thana. Naimuddin Miji, Emdadulla and Yakub Ali, and Osman Ali Chowkidar went there with me. Yakub Ali is accused No. 4 in the dock. On the way they told me to say at the Thana that my father was dead, but that I made no charge against any one. It was Osman Ali Chowkidar, Emdadulla and Yakub Ali who told me this. When we got to the town they asked me if I were going to lodge information as they advised. I said what can I do. They then told me if I had any doubt to consult a *mukhtear* and be guided by his advice. It was Yakub Ali who told me to consult a *mukhtear* and Osman Ali Chowkidar said the same. They took me to Ashraf Ali, *mukhtear*.

By the Court: There was no talk as to which *mukhtear* should be consulted—when I say "they" took me to Ashraf Ali I mean all four.

In-Chief: On the way to the *mukhtear's* we met Sadak Ali. He is accused No. 1 in the dock. We went to the *mukhtear's* lodging and saw him there. The *mukhtear* Ashraf Ali told me to lodge information as I had seen. From the *mukhtear's* lodging I went to the Thana and lodged information there. It was taken down by Osman Ali Daroga. The four men accompanied me from the *mukhtear's* to the Thana. Sadak Ali was not with us, he did not go with us to the *mukhtear's*. The *mukhtear's* lodging is at Mandiagona (a quarter in this town). It was 7 or 8 a.m. when I lodged information. The signature to Exhibit 1 (First Information) is mine: that is the information I gave (on its being read over the witness says) it is correctly recorded. After I gave information the four men left me and went elsewhere. I myself went home. I did not notice where the four men went after we came out of the Thana. Soon after my return home a constable arrived. I don't know his name, he was a Hindu. At first I saw one constable only. Afterwards I saw two. After the arrival of the two constables, my father's body was taken out of the tank by one of the constables Jinnat Ali and Lashkar. I do not remember whether the other constable was present at the time. When the body was taken out I saw that the skin on the throat had disappeared, the forehead was swollen and discoloured, the skin just behind the two ears was abraded and reddish, and the left eye was gouged out, and there was a red mark like blood on the lower part of the male organ (penis) on one side. I saw other marks of violence, but did not notice them particularly as I felt faint and began crying. A constable and I accompanied the dead body of my father to the Noakhali Hospital. It was a Hindu constable. It was 2 or 3 p.m. when we got to the hospital. The doctor held a *post mortem* examination. I identified the corpse as my father's. The doctor examined the body a *ghari* or two (one *ghari*=24 minutes) after we brought it. After the examination was over I sent my father's corpse home by Keramat Ali, my cousin's (*chachato bahin's*) husband who had come to the hospital with me and myself went to the Thana and lodged a second information there, who recorded this second information I do not remember. It was night when I lodged the second information, it was 10 or 12 p.m. The signature to Exhibit 2 is mine, that is the second "first information" which I gave (on its being read out to him the witness says) it is correctly recorded. When I was giving information, the Daroga told me to name a few of the persons with whom my father had enmity (volunteered). After lodging this second information I went home. Next morning at 7 or 8 a.m., Osman Ali Daroga came to our house. I went with the Daroga to the houses of these four accused in the dock, of Abdul Karim, of Emdadulla and of Amiruddin. Amiruddin, Abdul Hakim and Yakub Ali live in the same *bari*. In none of these *baris* did we find either the house owners or any one else. It was that morning that we went to those *baris*, that Monday morning. We also went that morning to the *bari* of Osman Ali Chowkidar, but found neither him nor any one else there. That Osman Ali is the same man who went with me to the Thana. Osman Ali Daroga was in our village investigating for 12 or 14 days. The accused came back six or seven days after—after the day we went to their homes. Osman Ali Daroga did not arrest or *chalan* any one. I presented a petition

to the Magistrate Sahib. The signature to Exhibit 3 is mine, that is the petition which I filed. (The petition was here translated in Bengali to the Assessors, and the witness on being asked, said) yes, that is the petition I filed. After I filed that petition the Police Sahib made an investigation—he examined witnesses. He went to the mufussil, but he examined the witnesses here. The District Superintendent did not *chalan* or arrest the accused. Mathur Babu, the Inspector, *chalaned* the accused. I know Amzad Mir and Hamida Thaka. They were in our village the whole time the Daroga was there. They do not live in our village. Amjad lives 2 or 2½ miles off and Hamida one mile off. They were looking after the case on behalf of the accused. They would go to the houses of the accused and come back and whisper to Osman Ali Daroga. Osman Ali Daroga's daughter is the wife of Amjad Mir's son. Amjad is Hamida's uncle (*chacha*). I know the houses of these four accused. Sadak Ali and Aslam live in the same *bari*, they are cousins (*chachato bhai*). Their *bari* is 30 or 40 cubits south-east of our tank—of the tank in which my father's corpse was found. Anwar Ali's *bari* is 25 or 30 cubits to the south of the tank. The house of Yakub Ali is a kani or a kani and a half (one kani = say 100 yards) to the north-west of the tank. Sadak Ali, Aslam and Anwar Ali are our tenants. They were on bad terms with my father. They won't pay their rent. Sadak Ali has paid none for five or six years. My father sued to eject him and Aslam, but lost the case. He then brought an enhancement suit against them and got a decree. I made a mistake—my father did not lose the ejectment suit, he got a decree for ejectment, but the defendant's took a *nim-howla* settlement from him and stayed on. The enhancement suit related to the same land of which they had taken *nim-howla*. My father let out three koras of land to Sadak Ali, and as the latter would not give it up my father took possession by force. That was a month or a month and a half before his death. A little while after we took possession Sadak Ali came to the land and said, "you have not taken lands, you are digging your own graves." The day before my father started from home for the last time, the Friday, three cattle of Sadak Ali ate our paddy. My father and I went near to seize them—whether my father actually laid hold of any or not I forget. Sadak Ali and Aslam came up and threatened us, and out of fear we came away. Sadak Ali said, "you have taken the land once, this is your last time." Aslam abused us. My father brought a criminal case against Sadak Ali, Abdul Hakim, Abdul Karim and Amiruddin —it was for assault. Sadak Ali was fined in that case. Abdul Hakim, who was accused in that case, is brother to the present accused Yakub Ali. My father brought another assault case against the same four persons and Yakub Ali. The first criminal case was three or four years ago; the second two years ago. The latter case was dismissed.

At this stage the Court adjourned for the day.

A. PENNELL,
Sessions Judge.

The 7th January, 1901.

The 8th January, 1901.—Case taken up again and examination-in-chief of witness resumed. My father brought rent suits against the accused Aslam and Anwar Ali; those suits are still pending. They have pleaded payment. They filed their written statements in my father's lifetime. I know Jahiruddin; he is uncle (*chacha*) of Yakub Ali, accused. My father brought a suit against him on a mortgage bond and got a decree; he bought Jahiruddin's *bari* at the execution sale, but Jahiruddin, Amiruddin, Yakub Ali and Abdul Hakim forcibly opposed his taking possession. My father thereupon brought a title suit against those four men and got a decree. This was three or four years ago. My father took possession of the *bari*, but Jahiruddin's son Amiruddin subsequently cut and took a tree from the land. My father brought a criminal case and Amiruddin was fined. About two years ago I was assaulted on going to that *bari* by Abdul Hakim and Yakub Ali, accused. I brought a criminal case and Abdul Hakim was sentenced to a week's imprisonment and Rs. 10 fine. That Abdul Hakim is Yakub Ali's brother. The same day that I was beaten, Abdul Hakim, Yakub Ali and Amiruddin cut and carried off some paddy from our land. For that my father brought a criminal case, and Abdul Hakim was imprisoned for a week and fined Rs. 20. After we took possession my father brought a suit for *wasilat* (volunteered) and got a decree. One Esuf brought a cattle theft case against my father at the instigation of these accused, and the accused Sadak Ali gave evidence for the prosecution. My father was acquitted. Sadak Ali is *mamu* (maternal uncle) of that Amjad Mir whose son has married Osman Ali Daroga's daughter (who is Osman Ali's *biai*). Ali Manjhi is uncle (*chacha*) of Yakub Ali, that Ali Manjhi is *mamu* (maternal uncle) of Osman Ali. Abdul Karim, who is an accused in this case, is Osman Ali Daroga's *mama sasur* (wife's uncle). Abdul Halim,(?) one of the accused, is nephew (*bhatija*) of Amjad Mir. Karim Buksh, accused in this case, has married the niece (brother's daughter) of Hamida. I made no search or enquiry for my father on his failing to return home, as I thought he must be staying with some one. There was rain that evening—the 9th Bhadra—from a little before to a little after sunset.

Cross-examined: The rain stopped about two *gharis* after sunset. It was not quite dark then. I was inside the house so did not notice the condition of the sky afterwards, but so far as I could see, it was clear. I don't remember if there was high wind (*tufon*), but there was rain. I don't remember my father's ever failing to return before. He used as a rule whenever he went to town to come back the same day, but

it may now and then have happened that he stayed behind. I have no adult male relation in our village, but I have my sister's husband, Yakub Ali, living at Dharmapur, four miles from our village. I have another brother-in-law Aliullah, living on the race course (a piece of ground close to Sudharam). Aliullah's father Wazuddin Khalifa is living. It is not true that Aliulla and Wazuddin live with us or stay with us on long visits—they come to us occasionally for a few days. There is no one in the village on our side, they are all against us. There are 14 or 15 *baris* in our village, they all belong to us, but the occupants are all against us. In the whole village (=village lands) of Char Uria, there are many houses—perhaps 500; the occupants are neither our friends nor our enemies. I did not send word to anyone in the morning on seeing my father's dead body. We have no enmity with Abdul Aziz, Kamil or Romjan Ali. They do not live quite close to us, they live 8 or 10 kanis off—all three of them. They all live in one *bari*; there are two *baris* intervening between ours and theirs. It is not the fact that Abdul Aziz and Kamil are my *khalato bhais* (cousins); they are no relation at all to me, nor is Romjan Ali. I did not inform them of finding my father's body. I did not tell anyone.

By the Court: When I saw my father's body it was floating face downwards. Only the head and back were visible. I did not at that time see any mark of violence.

Cross-examination: I was going down into the water to see the body, when Osman Ali forbade me. I cannot say if any of my witnesses was present when he so forbade me. I suspected even then that someone had killed my father. I did not suspect all the villagers of having killed him, but I suspected some of them. I did not go to Aliullah's house on first coming to the town. I saw Aliullah that day at the Thana, but whether before or after I first lodged information I don't remember. I don't remember consulting with him as to what I should tell the Police. The four men who accompanied me, after telling me not to accuse anyone, took me to Ashraf Ali the muktear. I don't remember that I told the muktear of my suspicions.

By the Court: I was not previously acquainted with Ashraf Ali.

Cross-examined: I did not appoint Ashraf Ali my muktear in the Lower Court—Jashada Babu was my muktear. I knew some other muktears in the town before that day. I knew Jashoda Babu. I did not know the Bhulua Raj Muktear Basanta Babu. Among others I knew a muktear called "Ginhaja." I did not know any other mukhtears well. I went to Ashraf Ali's lodging in preference to theirs because the four men took me there. I never saw Ashraf Ali Mukhtar at our house before this occurrence. I did not consult anybody before lodging my second information at the thana. I went home from the thana with Aliullah. I don't remember what time it was when I got home. That was after lodging my first information. I don't remember whether Aliullah and I reached my home before or after the constables arrived there. No one at my home advised me to lodge the second information. I lodged it at the instance of the Daroga—of Osman Ali. I met Osman Ali at the thana. I went there with the body. I would have given *ijahar* again even if the Daroga had not told me to—I would have done so of my own motion. When I gave the first information I had not my wits about me. It was night when I got away from the hospital, it was 6 or 7 p.m. I don't remember if I went to the thana myself or if anyone took me there.

By the Court: I don't remember whether I went to the thana that second time alone, or if anyone went there with me.

Cross-examined: Osman Ali Daroga took up his quarters at our house when he came to investigate. Afterwards he went to Naimuddin Miji's. I forget how many days he was at our house. He was six or seven days at Naimuddin's. I can't say how many days he was there—five or seven days. I was at home five or seven days he was there. After he went to Naimuddin's I went and looked after the case there. I did not bring any of the witnesses to the Daroga, they came of themselves. I don't remember if Aliullah was present or not during the five or seven days the Daroga was at our house. There was no one to look after the case on my side. When I filed Exhibit 3 before the Magistrate, at that time I went to Nunda Basi and Nunda Kumar. Those two men did not conduct the case on my behalf before then nor did Sadak Ali. I did not see any of those three men present before the *daroga* between the Monday when he arrived and the following Thursday. I don't remember their being present on the Friday. Bharat Babu, the Inspector, came to our village how many days after Osman Ali I cannot say. I saw the Inspector fishing two or three days in the tank of Abdul Hakim, accused. I can't say how many days he was in the village. The Police Sahib came to our village one day, but I can't say which day or in what part of the week it was. Between the Monday and Thursday the *daroga* examined some witnesses. I was not present at the examination throughout. Many witnesses were examined on those four days. I saw many examined. Some of them I did not know before. I saw Torap Ali depose during those days. I also saw Hosan Ali depose, but was not present throughout his deposition. I did not know Islam at the time, and can't remember if he deposed or not on any of those four days. I do not remember Abdul Aziz deposing or Mohabat Ali, or Abdul Aziz Mir. I did not see Rajab Ali depose, Abdul Mir did depose. I did not see Mahomedulla deposing, nor Abdul Latif, nor Ana Mir. I knew Torap Ali before, but not Hosan Ali. I knew Torap Ali through his deposing in a case of ours, he did not visit our house nor I his. It was the cattle theft case—he deposed for my father in that case. He gave evidence because

he knew our cattle, the cattle which were the subject of the case. He knew them as they used to be taken close to the entrance of his *bari*. I don't remember what was done when the witnesses were examined by the Police, whether when one man was deposing other witnesses were kept away, or if they were allowed to be present. Other people were present besides the witness under examination. I was in the cutchery hut, and Torap Ali was examined under a tamarind tree. I was three or four nuls from him, about 30 cubits. It was 10 or 11 a.m. when Torap was examined—Hosan Ali also deposed at that time, a little after Torap. There were four or five other persons present, when Torap deposed—among them were Chatur Ali and Abdul Mujid (the witness at first said "Abdul Majid may have been there"). I forget who the others were. Chatur Ali and Abdul Majid are residents of Chur Uria—they have no connection with us. The constable called all the villagers, and so Torap Ali and Hosan Ali were called—it was not at my instance. They live a mile from me. I met those two men one day, after they had been examined, and they told me what they had said. I forget how many days that was after their examination. It was before I petitioned the Magistrate. I made Hosan Ali's acquaintance for the first time on the day when he told me what he had said before the *Daroga*. The Police Sahib asked me for the names of my witnesses. That was before* I petitioned the Magistrate, but I can't say how many days before.* I don't remember whether or not I learnt the names of any other witnesses before petitioning the Magistrate. I don't remember whether or not I gave the names of those two witnesses to Joshoda Babu when I got him to write Exhibit 3. Nunda Basi was with me when Joshoda Babu wrote the petition. I don't know Nunda Basi to be a tout (torni)—so far as I know he is a gentleman. I don't remember the Police Sahib telling me, on the day when I petitioned the Magistrate, to produce my witnesses the next day, nor do I remember the Magistrate telling me to produce my witnesses before the Police Sahib. I appeared one day before the Police Sahib after filing my petition, but how many days after filing it I forget. The Police Sahib did not examine me that day, so far as I remember, I may have given him the names of Torap, Wasil, Abdul Karim and Ismail. I gave him the names of Wasil and Abdul Karim to prove enmity, and of Ismail as being an eye-witness. I learnt that Ismail had witnessed the occurrence before I petitioned the Magistrate. I don't know Ismail's father's name. Ismail told me that he deposed before the Daroga. He told me that before I petitioned the Magistrate, the Ismail whose name I gave to the Police Sahib has been examined in this case; he lives at Chur Uria. I made his acquaintance the day he told me of his having deposed. He lives three-quarters of a mile from our house. There is an Ismail whose house adjoins ours on the west. I did not accuse him in this case, but I have enmity with him. I call the man who has deposed in this case Ismail, not Islam. I know his name because he told it me. I don't remember whether he said it was Ismail or Islam, but I call him Ismail. When I gave these names to the Police Sahib, he told me to give a list of the other witnesses. I afterwards gave such a list—how long after I don't remember. I don't remember how many names the list contained. I got their names by enquiring—by enquiring generally. Osman Ali Daroga went to the houses of all the accused, not of three only. He went to all the houses in one day. It was not Tuesday when he went—it was Monday. It was Osman Ali who went to the houses, not Kisto Bhadra. I went with Osman Ali. So far as I know Kisto Bhadra did not go to their houses. I did not see him. Sadak Ali and Aslam did not appear on the Wednesday. It is not the fact that all the remaining accused appeared before the Daroga on Thursday or Friday. I don't remember the Police Sahib's coming on the Tuesday after the occurrence. It was in the day-time that the Police Sahib came, but I forget whether before or after breakfast. I don't remember Torap Ali saying anything to me about his deposition the day he deposed before Osman Ali, nor do I remember his saying anything about it before he deposed. I do not remember whether or not any one told me that Torap Ali and Hosan Ali knew about my father's murder. I know Atar Ali of Chur Salla. He did tell me one day that Torap Ali and Hosan Ali had told him they had seen my father being dragged along. He told me that before I petitioned the Magistrate. I don't remember giving Atar Ali's name to the Police Sahib. I don't remember how many years ago my father brought the case against Sadak Ali and Aslam. I did not conduct that case or depose in it, but I have seen the judgment, I don't know of it personally. I don't know personally about the enhancement suit. I know personally of some of the cases I have mentioned. My father did not bring any case against Sadak Ali for threatening him a month or a month and a half before the occurrence. Nur Mir was present when the threat was used. He is not a witness in this case. We did not complain about Sadak Ali's cattle damaging our paddy. We did not complain as they had all combined together. We did not complain of Sadak Ali's threat that this was our (last time), because we knew no one would give evidence for us. There were other people on the road on that occasion, but I forget who they were. My father has not had any cases lately with his other ryots, besides those I have mentioned. I don't remember his having any cases with them. My father was a peon and jagirdar of the Bhulua estate. He used to serve notices and proclamations on the tenants of that estate, and act as identifier. He was cited as a witness every now and then.

At this stage the Court adjourned for the day.

A. PENNELL.
Sessions Judge.

The 8th January, 1901.

* Corrected on reading over to "after."

A. PENNELL.

The 11th January, 1901.

9th January, 1901.—Case taken up, cross-examination of witness resumed. Besides my *talai* (sister's father-in-law) Wazuddin Khalifa, I do not remember that any relative of mine was at our house during the period Monday to Thursday at the beginning of the investigation. My sister's husband Aliullah may have been there too—yes, he was there. I forget whether he went to the house of any of the accused when they were searched for on the Monday. It is not the fact that Osman Ali and I went to some of the houses and Kisto Bhadra, head constable, and Aliullah to others. There was a head constable named Kisto Bhadra present at the investigation. Yes, he was present that Monday. I don't remember whether or not he went with the Daroga. I saw him at our *bari*, but what he did I don't know. It was on the way that the four men told me not to accuse anybody. It was in Naimuddin's presence that the other three men told me not to accuse anybody. Amjad Mir is not the *panchayet* of our village. I do not know whether he is *panchayet* of Salla. I don't know as to the respectability of Amjad. Amjad is the son of Sadak Ali's father's sister. I don't know that sister's name. I don't know who was the father of Amjad's mother, or where she originally lived. I have seen Sadak Ali's wife taken to Amjad's *bari*, they visit each other. I have seen Amjad's wife go to Sadak Ali's *bari*. I can't say what her age is—her complexion is fair. I don't know her name. Ali Manjhi and Yakub Ali's father are first cousins. Osman Ali Daroga has married the daughter of Sona Gazi, of Chur Durbesh. I don't know where Sona Gazi married. I don't know where Osman Ali Chowkidar's mother came from, or who her father was. Abdul Hakim and Yakub Ali are brothers. Akbar is the son of Abdul Karim's mother's sister. Abdul Karim's mother comes from Chur Durbesh. I don't know her father's name. I don't know the name or residence of Osman Ali's mother's father, but I know she is Ali Manjhi's sister (*bohin*). What sort of *bohin* I can't say. I have been to Chur Durbesh. I went once when I was very young to a party (*nimantran*) at Osman Ali Daroga's father-in-law's, but I am not related to him. The father-in-law's house is a mile or a mile and a quarter from ours. I have been to Ali Manjhi's house. They are three brothers. I don't remember the names of the other two. I remember two sisters of Ali Manjhi. One of them is married to Riazuddin. I don't know the name of the other one's husband, nor do I remember where he lives. Riazuddin sometimes stayed at Osman Ali Daroga's house. I have never been to Osman Ali Daroga's house. I saw Riazuddin there two or three years ago. The accused live close to our house, and I have known from the first all along that they were related to Osman Ali Daroga. The Inspector Bharat Babu one day asked me who I was, and someone said I was the murdered man's son; that is all Bharat Babu or the Police Sahib ever asked me. The Police Sahib came to my *bari* one day before I petitioned the Magistrate and asked me something, but what it was I forget. I don't remember seeing Bharat Babu in our village more than two or three days. I do not know of his making any enquiries about this case at Peshkar's Hat. I was not acquainted with Bharat Babu before. Bharat Babu did not make any investigation. I don't remember telling him of the relationship between Osman Ali and the accused.

Re-examined: I could make out it was my father's corpse from the neck, head, and back. Atar Ali, of Salla, whom I named in my cross-examination, is dead.

By the Court: Atar Ali died about three months ago so far as I remember. It was after I petitioned the Magistrate—about 15 or 20 days after. When my father left for Sudharam on the morning of the 9th Bhadro, he was wearing a black-bordered *dhuti*, a white coat (*piran*) and a sheet: he had an umbrella and a hat. He had some papers in his pocket. I don't know if he had any money. When he was found floating in the tank, he had on only the black-bordered *dhuti*. I have never got back or seen any of the other articles he had with him. I searched the tank for them. After coming out of the hospital I sent off my father's body. I then went to the thana. I took the body to the hospital in a bullock-cart—Mohabat Ali's bullock-cart. Mohabat Ali came with the cart. I sent back the body in the same cart. Mohabat Ali went back with it. He was outside on the grass while the body was being examined. Karamat Ali was in the hospital. I did not go anywhere else after sending the body off. I went straight to the thana, but the Daroga was not there, and I had to wait for some time. I say it was 10 or 12 p.m. when I lodged the second information, because I heard the clock strike—the Collectorate clock. I heard it strike ten or eleven. I remained sitting at the thana for two or three hours. I went to Nanda Kumar and Nanda Basi, to consult them, as they were men of respectability of our quarter. Nanda Kumar and Nanda Basi are the same person, not different person, his *bari* is in Chur Uria, about a mile and a half from our house. I did not know him before this case. I went of my own accord to consult him as he was a *bhadralok*. He is a talukdar and has cultivation. Ismail, our next neighbour, belongs to the party of accused, he belonged to their party even before this case. I say that on account of his conduct; he went with the accused and was not obedient to us. He was not our *ryot*. I have never seen him depose for the accused or against us in any of our cases. He is not related to us. Aliullah went back to my home with me after I lodged the first information. I don't remember his coming to Sudharam with the dead body. I found Wazuddin already at my house when I returned there after lodging the first information.

NOTE.—This lad is decidedly intelligent.

A. PENNELL,
Sessions Judge.

The 9th January, 1901.

By the Court (at request of accused's pleader): I searched in the tank as far as I could go without the water being over my neck, and also searched with a bamboo. I have seen Nunda Basi in Court at times during my examination. His full name is Nanda Basi Das.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDER,
Sessions Clerk.

The 10th January, 1901.

16th January, 1901.—Re-called and further examined-in-chief (at suggestion of Court). I know the witness Mohabbat Ali. He has not appeared in this Court. As he failed to appear I tried to get him. I went to his house two or three days. I did not find him. The last time I went was on Monday, this last Monday. I searched for him. I made enquiries at his house. I saw his father and asked the latter where he had gone.

Not cross-examined.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

II.—HOSAIN ALI.

The deposition of prosecution witness No. 2, aged about 40* years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. Pennell, Sessions Judge of Noakhali, this 9th day of January, 1901.

* Looks older.—A. P.

My name is Hosain Ali. My father's name is Mohamad Kamil. I am by caste Mussulman. My home is at Mouzah Char Uria, Police Station Sudharam, Zilla Noakhali. I reside at present there, where I am cultivator.

I knew Ismail Jagirdar. On the 9th Bhadro last I went to Bellew Saheb's *hât*. I started from the *hât* about two *dundas* (48 minutes) after sunset to return home. One Torap Ali accompanied me. We had got close to Ismail Jagirdar's *bari* when I heard a cry of "*mago*" ("oh mother") from a distance of 17 or 18 cubits. That place is east of Ismail's Jagirdar's house. His house faces east. Torap Ali and I went forward towards the direction of the cry. I saw Sadak Ali holding the Jagirdar Ismail by the throat. I mean this accused Sadak Ali. This accused Aslam was holding Ismail by the waist and arms and this Anwar Ali accused was holding him by the legs. They were carrying him towards the west. We were advancing towards them when six or seven persons came from the west and said "seize them." They said nothing else but "seize." Out of fear we went off homewards towards the south. I could not recognise any of the men who came from the west. The place where I saw Ismail Jagirdar being carried is about a kani to the east of his tank. This was about four or six *ghoris* after sunset. There were flashes of lightning and also star light. On our way home we called to Osman Ali Chowkidar, whose house is south-east of the road. His mother spoke to us. Osman Ali himself did not answer us nor did I see him. We called out to other people on our way who live in the houses on both sides of the road, but no one answered us. We came across one Atar Ali at the entrance of Har Chandra Dutt's house—we told him about the occurrence. When I got home I told my brother and mother. I did not call to anyone of Ismail Jagirdar's *bari*, because the other men were too many for us. About a *prohar* after daybreak next morning, after tethering my cattle, I was going to Ismail Jagirdar's house. On the way I received certain information from some children. I then returned home. I live a mile to the south of Ismail Jagirdar. I deposed before Osman Ali Daroga during the investigation of this case on Tuesday, the 12th (Bhadro). He examined me at Ismail Jagirdar's *bari*. I told him what I had seen. I also deposed before the Police Sahib on the 27th Bhadro. After my deposing before the Police Sahib one or two days after—I can't say exactly—Osman Ali Daroga threatened me, saying he would put me in jail, and that I should eat from iron plates (used in the jail and (it is said) disliked by prisoners). On the Daroga threatening us eight of us petitioned the Collector. The signature to this petition (Exhibit 4) is mine, that is, the petition we filed. There are two roads leading from Bellew Sahib's Hât to our house. One passes to the west of Ismail Jagirdar's house and the other to the east of it. The one to the west is the shorter. We came by the east road. We went by this latter road, because there are breaches on the western road—one big breach and two or three smaller ones. The breaches are under

water and one cannot get through without wetting one's cloth, the water is waist deep. There is a difference of 2½ or 3 *kanis* between the two roads. I did not see anyone of Ismail Jagirdar's household before deposing before the Daroga. I am not related to Ismail Jagirdar, nor do I hold any land under him.

Cross-examined: At the request of the accused's pleader, the cross-examination was postponed till to-morrow, as he wishes to cross-examine this witness and Torab Ali on the same day. It has struck 4 p.m.

A. PENNELL,
Sessions Judge.

The 9th January, 1901.

The 10th January, 1901.—Case taken up. The witness cross-examined. I know Nanda Basi. In these four days I have been in this room. I can't say what has been happening outside, but I have seen Nanda Basi occasionally in Court. He did not come to Court with me to-day. I have had no conversation with him to-day. I can't say whether he conducted the case before the Police. I don't know of his being a tout (*torni*). I am a cultivator and do not know about such things. I can't say whether his land has been sold. His house is four or five *kanis* from mine. After witnessing the occurrence I went for about a quarter of a mile along the village road and then got into the Government road. I have never counted the houses on the way, but there will be 30 or 40 houses on the way between the place of occurrence and my house. I called to a man who sells lime, I don't know his name, who lives south of Sadak Ali, accused. No one answered. I also called out to Amjad, son of Asraf Jemadar, but he also did not answer, nor did anyone else. I also called to one Ahmad Ali, who lives to the south. He did not answer. I called to three or four *baris* in this way. Hosan Ali Chowkidar's house is a little way off the road. I did not call to him. His house is four or five *kanis* from the road. I called to these men from the road. I did not go to their houses. I saw the occurrence from the village road which lies to the east of the tank. The tank is as far from that road as from here to the end of the Court compound (about 40 or 50 yards—I am told it is 45 yards). The men holding Ismail were south of my front (*samne*). The men who called out to seize us were due west of us, they were on a level with us. We did not start back north when they called out, we went straight on southwards. They did not pursue us. I had been to Islam Jagirdar's *bari* a few times, two or four times before this occurrence. I know Imdadullah's *bari*. It adjoins the road by which I passed on the west. There is a road to the south of that *bari* which joins the road by which we came. When I witnessed the occurrence I was, roughly, some 60 or 80 cubits south of the place where those two roads meet. I cannot say whether there is an empty *bari* to the west of Ismail Jagirdar's tank. I don't know Karimuddin. I have never been to Imdadullah's house. I can't say whether there is any path to the west of the tank. I have never been that way. I don't remember whether or not I told my wife about the occurrence. I may have told her. I deposed before the Police Sahib. He wrote it down. I don't remember whether or not I told him that I had not told my mother or wife or any member of my household about the occurrence. I don't remember whom I met next morning. I can't give the name of anyone I met. I don't remember whether or not I met any *matbar* or friend the day after the occurrence. Hur Chandra Dutt is a *matbar* of our village. Hosan Ali Chowkidar and Nanda Thakur are *panchayets*. Hur Chandra Dutt's house is close to the road, but Nanda Thakur's is some way off. I did not go to the house of any of the three to tell about the occurrence. I don't remember speaking about the occurrence to anyone besides my mother, brother and Atar Ali before I deposed before the Daroga. I heard on Monday that the Daroga had come to investigate. I did not go to Ismail Jagirdar's house either on Sunday or on Monday. I went there on Tuesday. A Musalman constable, whose name I don't know, told me to go there. There was only one constable who came. I did not go with him—but a little after. I got to the *bari* about 9 or 10 a.m. I did not call Torap Ali to come with me, nor did I tell the constable to fetch him. The constable told me the Daroga had come to investigate the murder case, and that I was to go and give evidence. When I went there I saw Torap Ali deposing. He was south-east of the *cutchery* hut—he was under a tamarind tree. There were others present—Nur Mir, Atar Ali, Abdul Majid, Abdul Aziz, Haidar Ali, Chutur Ali and others. I don't know Aliullah. I know Wazuddin Khalifa. I did not see him there nor did I see Idris. There were 10 or 12 others present besides those I have named. After Torap Ali's examination was over I was examined. I did not see Nanda Basi or Nanda Thakur there. I did not see among the persons present any *punchayat* or *matbar*. I did not see Hasan Ali Chowkidar. The Daroga took down my deposition on paper. My examination lasted less than a *dondo*—it took less than a *dondo* (24 minutes) for him to examine me and Torab Ali, both. We were examined in the presence of the persons I have named and of the 10 or 12 others. After me the Daroga examined Islam. I did not see whom he examined next, as I came away. The Police Sahib had been and gone away before I came there. I did not see him, but I was told that I did tell Idris about what I had seen. I told him some days after. I did not tell him on that day. I did not see him that day. I did not know Idris before. I knew Ismail Jagirdar, but not his son. I did not tell any other member of Ismail's family either on that day. I told Idris two or three days after—

he was crying on the road north of Peshkar's *Hat*. He was talking to some one and was crying about his father's death. I don't know the name of the man he was talking to. I asked that man who the boy was, and the man said it was Ismail Jagirdar's son. I told Idris that I had told the Daroga what I knew about his father's death. He did not ask my name, nor did I tell him, nor did the man speaking to him ask me. I told Idris that Torab Ali and I had seen the occurrence and had told Atar Ali about it. Salla is a separate village from Chur Uria, but adjoins it. There was rain on the day of occurrence. It rained from sunset till two *ghoris* after sunset. There was starlight (*chat phar*). There were no clouds after the rain stopped. I told the Police Sahib that there was starlight and flashes of lightning. I don't remember whether or not I told him that it was a dark night. There was high wind (*tofan*) with the rain, but it stopped when the rain stopped. I gave the same particulars to the Police Sahib as I have given here as to the parts of Ismail Jagirdar's body held by different accused. I did not tell him anything different. I met Atar Ali at the entrance of Har Chandra Dutt's house. That house faces east, the entrance abuts on the road. I know Afsaruddin's *bari*—it is on the east of this road. The way out of his house (*doroja*) is to the east of his house. I met Atar Ali just at the entrance of Har Chandra's *bari* on the road. The *bari* itself is five or seven *nals* of seven cubits each from that place. Our *bari* is four or five miles from Sudharam as the crow *flies*. I often come to the town, both to buy and sell. Bellew Sahib's *Hat* is four miles from my house. I go there every now and then. I went there that day to get a fishing cage; no one went there with me. I bought a *paral*. I don't know why Torab Ali went there. I met him at the blacksmith's. He brought two ducks (hâs) with him from the *hat*; *parals* are not to be had at Peshkar's *Hat*, but ducks are. The *hat* is held at Peshkar's *Hat* on Sundays and Thursdays. Jagabandhu Doctor's *Hat* is close to my house—it is held on Fridays and Tuesdays. There are a number of fishermen living all round. *Parals* are not to be had at that *hat*. There are a few (*jot kinchit*) *parals* for sale at Kalitara *Hat* in this town. They cost 12 pice (=3 annas) each. I met Torab at sunset. I was waiting on account of the rain. There were others waiting there on account of the rain, but I do not know them. I do not know the blacksmith. I live four miles off. We started from there together two *ghoris* after sunset. No one else of Chur Uria was with us. I may have seen other Chur Uria people at the *hat* that day, but I don't remember them. We came south along the Government road to the *doroja* of Gura Mir. We then turned east by that *doroja*—we then passed southward by the *doroja* of Badruddin Miaji—we went further south by the *doroja* of Ali Mia, the son of Ashraf Jemadar. We then went further south to a banian (*asatha*) tree which is close to Abdul Hakim's house. Then we went east, passed close by Emdadullah's *bari*, and then went south. There is a break near Gura Mia's *doroja*, it is at Badroddin's *doroja*; it will be 20 cubits in length. There is a palm (tal) tree put there to cross by. I do not remember any break at Gura Mia's *doroja*. There is a *khal* to the north of Badruddin's *bari*, it crosses the road from east to west.

By the Court: That *khal* is what I have described before as a break—it is the place where the *tal* tree has been placed.

Cross-examination: There are two small breaks to the north of this *khal*, on the way from Bellew Sahib's Hat. They are not bridged over, but there is only a little water in them. There is a break of 8 or 10 cubits to the south of Ashak Jemadar's house. I know Kalabhanga *dighi*. I do not remember having told the Police Saheb that I was going south by the road which passes to the east of Kalabhanga *dighi*. I don't remember saying that. I did not depose in any case of theft of *pulse* (*kalai*) brought by Renu Mir against the witness Islam. I have not deposed in Islam's defence in any case, he cited me once as a witness in a civil suit at Lakhimpur, but I did not give evidence. I did not depose in defence of the witness Rajab Ali in any case brought against him by Renu Mir. I have deposed in two or three civil suits of Afsaruddin's. I deposed in defence of Muzaffar in a case; he was seized from the road: whether it was a theft case or not I did not ask him. I gave evidence; but whether he was convicted or not I can't say.

Re-examination: I did not go to Ismail Jagirdar's house on Sunday or Monday because I had no need to do so.

By Assessors: I live a mile from the accused. I knew them before the occurrence, but not intimately. I went close to them and so I saw who they were.

By the Court: I went to Bellew Sahib's *Hat* for the *paral* because I had some chilis to sell—two seers of chilis. I sell chilis sometimes at Kalitara and sometimes at Bellew Sahib's *Hat*. Of the two small breaks I have mentioned, one is seven or eight cubits and the other four or five. The water (at that time) was less than knee deep at those breaks.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.
The 11th January, 1901.

III.—Torap Ali.

The deposition of prosecution witness No. 3, aged about 50 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 11th day of January, 1901.

My name is Torab Ali. My father's name is Buksh-Chowkidar, I am by caste Mussalman, my home is at Mouzah Salla, Police Station Sudharam, Zilla Noakhali. I reside at present there where I am *howladar* and cultivator.

I knew Ismail Jagirdar. I knew the accused before this case. On Saturday 9th Bhadro last I went to Bellew Sahib's *Hat*. I left the *hat* to return home about two *dandas* after sunset. I was accompanied by Hosain Ali the last witness. It was clear when we started for home, there was no storm or rain. We were going south by the road which passes to the east side of Ismail Jagirdar's *bari*. I hear a cry of "*mago*" ("oh mother"). We stepped forward in the direction of the sound. I saw this accused Sadak Ali holding Ismail Jagirdar by the throat; Aslam (this accused) holding him by the arms and waist, and this accused Anwar Ali holding him by the two legs. They were carrying him towards the west. I said to the men "It is not good—are you killing Ismail Jagirdar or setting fire to Chur Uria"? I was three or four cubits off them. We were 17 or 18 cubits off when I heard the cry of *mago*. When I spoke to the men holding Ismail four, five or seven other men threatened us, saying "seize them." I did not recognize any of those men—they were some way off, some 15 or 17 cubits off. It was then six *ghoris* after sunset. When we were threatened we were afraid and went hastily to the south. We called out to Osman Ali Chowkidar at his house. Some one who from her voice appeared to be his mother replied. We also called out to the *chunawala* (limeseller). I don't know his name. People call him the *chunawala*. We also called to Amjad and Ahmad Ali. Of all these persons no one replied nor did anyone else in their houses reply. The houses of the persons I have named are on the two sides of the road we went along. We met Atar Ali on the Government road at the place where Nobin Dutt's *doroja* joins it. I know Hara Chandra Dutt, he and Nobin Dutt live together. I told Atar Ali that Sadak Ali, Islam and Anwar Ali were killing Ismail Jagirdar and asked him to go there. Atar Ali said "I don't like to go—they beat him before." We, Hosain Ali and I, then went home. Hosain Ali lives four or five kanis from my house. I did not go to Ismail Jagirdar's house next day. Ismail Jagirdar's house is about a mile from mine. The morning after the occurrence I went to Ramgopal Shaha's house which is in my village and north of my house to buy seedlings. At the time of going there I informed Karim Buksh, Nanda Thakur and Nur Mia of the previous night's occurrence. I failed to obtain seedlings at Ramgopal Shaha's, and was coming home when I received certain information from Golok Sudra. I then went home and then started from home for Ismail Jagirdar's *bari*. When I got to the north corner of Ulsara *dighi* I met a head constable and a chowkidar. I know the chowkidar, his name is Hosain Ali. I also know the head constable but I don't know his name. Then two men gave me certain information. It was then about 10 or 11 a.m. After meeting these two men I went home. I did not go to Ismail's house on the Monday. I went with some men to remove some trees, which I had bought previously from a *bari* which is close to the river and is being diluviated. Next day, early in the morning, a constable called me to go before the Daroga at Ismail Jagirdar's *bari*. I went and got there about 10 or 11 a.m. I saw there Osman Ali Daroga. I deposed before him. I told him what I had seen. I also deposed before the District Superintendent of Police on the 26th or 27th Bhadro. There are two or three paths from Bellew Sahib's *Hat* to my house. The straight road is broken, it passes to the west of Ismail Jagirdar's house. There are two or three breaks in that road. We went by the road which passes east of Ismail Jagirdar's house. In one of the breaks I have mentioned the water is up to one's waist—in the other breaks there is only a little water. I know Amjad Mir and Hamida Thaka. I saw them present before the Daroga when I was examined. After I deposed before the Police Sahib the Daroga threatened me, saying that he would send me to jail and pour water on my head, and that I should eat from iron plates. I mean Osman Ali Daroga. The two signatures to Exhibit 4 (petition to Magistrate) are mine. It was filed before the Magistrate Sahib by a Mukhtar. I was present at the filing.

Cross-examined: The Daroga threatened me at Peshkar's *Hat* in front of the *mosjid*. He threatened others besides me—Hosain Ali, Abdul Aziz, Mojid, Atar Ali and others. I forget who the others were. This was at two *ghoris* before sunset. There were seven or eight of us there whom the Daroga threatened. We went there because the Police Saheb went to see the road. We and a number of others went. I did not notice who the others, not witnesses, were—Karim Buksh was there and others —Nur Miah was there. There were 15 or 20 others there besides witnesses. This was after the Saheb had left. There were no *bhadralok* there. This threatening was two or three days after I deposed before the Police Saheb. I did not meet the Daroga in that interval, nor do I remember seeing the Daroga between my deposing before him (the Daroga) and my examination by the Police Saheb. I have known the accused Sadak Ali, Aslam and Anwar Ali for five or seven years, no, more than that, I have always known them. They know me too. I have no enmity with them. The accused never came to my house between the time of occurrence and my deposing. No one has come to my house or to me either on complainant's side or on behalf of the accused. No one has ever told me not to give evidence in this case. Before the time when he threatened me at the musjid the Daroga had told me not to give evidence in this case.

I don't remember when he told me that, or where. Abdul Majid and Nur Mia were present when he told me. Those two men are not here. The time when the Daroga told me was a *prohur* (=3 hours) or ten *ghoris* (=4 hours) before sunset. I did not tell the Police Sahib, when I deposed before him, that the Daroga had forbidden me to give evidence. I did not tell any *matbor* of my village of the Daroga's prohibition. I did not tell anyone about it. Nanda Thakur was present when I deposed before Osman Ali—but neither Nanda Basi nor Hosan Ali Chowkidar was there at all events. I did not see them. Haidar Ali, Majid, Renu Mir, Ram Gopal Shaha and others were there. In all there were 15 or 16 persons present. I know Idris. I did not see him that day. I know his brother-in-law Alliullah, he was not then present, nor was his father Wazuddin Khalifa present. There was no one present on plaintiff's side when I deposed. When I had finished giving my evidence and got up to go away, Hosan Ali came forward. I was present during Hosan Ali's examination and then went away. Islom (*sic*) was being examined when I came away. The *daroga* took down my deposition—and all the depositions on Balli paper. I went home straight, without seeing Idris or any other member of that household. I did not see Idris or any other member before I deposed. I did not see any of them between the occurrence and my deposing. I heard crying going on in the house. I saw Idris on Friday at Peshkar's Hât and told him that I had seen his father being murdered and had given my deposition. I asked him what had become of the case. He said the accused had not been arrested. Several other persons were present when I had this conversation with Idris, but they are all strangers to me. I know Nanda Basi. He is not conducting this case. He has not come to this Court during the trial. I have not seen him here. I do not remember having told the Police Sahib that Nanda Basi, Nanda Thakur and Hosan Ali Chowkidar, were present when I deposed before the Daroga. The head constable and Chowkidar told me on Sunday that the body had been taken off. They did not tell me anything else. I was going to Ismail's house because of what I had seen and because I had heard that his dead body had been found in the tank. Golok Sudra told me about Ismail's body having been found in the tank. I had no further conversation with him. As soon as he told me that he went home. Hosan Ali is a *matbor* in our village besides being Chowkidar, his house is a little way off mine. His house is four or five *kanis* from the road by which we came along that night. Har Chunder Dutt is the only *matbor* I know of whose house is just on the road. I did not tell the Police Sahib that I saw Atar Ali at Afsaraddin's *doroja*. Nabin Dutt's *bari* is about a *kani* from the place where I saw Atar Ali—I mean the inner apartments are about that distance. I told the Police Sahib that I met Atar Ali on the Government road at Nobin Dutt's *doroja*. I do not remember telling him that I met Atar Ali half a mile from Nobin Dutt's *bari*. There was no rain while I was coming home from the hât, but after I got home it came on to drizzle. The sky was not clouded at the time of occurrence, it was a clear star-light night. I did not tell the Police Sahib that it was a dark night and raining. I told my wife about the occurrence. On my return that night the Captain Sahib (District Superintendent of Police) and the Daroga examined my wife about that (volunteered). I was *chalaned* in a case by Osman Ali Daroga. I was sentenced to one month's imprisonment and fine. I deposed as a defence witness in a theft case brought against Ismail Jagirdar. That is the only time I have ever given evidence on his behalf. I don't remember deposing in any other case. The case I have mentioned is only one in which I have been convicted. I went to Bellew Sahib's Hât that day to sell betel-nuts. I had 2½ seers to sell, and heard the price was up. Betel-nuts are also sold at Kalitara, Amtali (another *hat* in this town) and at Doctor's and Peshkar's *hat*. The market days at Amtali are Thursday and Saturday. Amtali Hât is three or four miles from my house. Bellew Sahib's Hât may be four miles from my house, it is a little nearer to my house than Amtali Hât. I sold my betel-nuts that day. I bought two ducks (hâs). I did not point out to the Police Sahib the road by the east of Kalabhanga *dighi* as being that by which we came. There are two small breaks in the road by which we actually came, and a larger one over which there is a tâl tree. There is one date (khejur) tree at the place where Ismail was held—there is no other tree close by, but there are other trees eight or nine *nals* (1 *nal*=7½ cubits) off on the bank of the tank—of Ismail's tank.

Re-examination: There is no other adult male member in Idris' house besides Idris himself. When I told Idris on the Friday that "we" had seen the occurrence, I *told* him the name of Hosan Ali—the witness Hosan Ali. The case in which I was chalaned was a case of assault on account of a tree. It was in 1286 B. S. Ismail won the case in which I deposed in his defence. I went to Bellew Sahib's Hât to sell my betel-nuts rather than to any other hât, because I was told I would get a better price there.

By an Assessor: I have never had any case against the accused. I have heard these accused have enmity with Ismail Jagirdar. I have not heard of his having any greater enmity with anyone else.

By the Court: Afsaruddin's *bari* is two or three *nals* from Nabin Dutt's *doroja*.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.
The 12th January, 1901.

IV.—Ismail.

The deposition of prosecution witness No. 4, aged about 30 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 12th day of January, 1901.

My name is Ismail. My father's name is Mohamed Daem. I am by caste Musulman. My home is at Mouzah Char Uria, Police Station Sudharam, Zilla Noakhali. I reside at present there, Police Station , Zilla , where I am cultivator.

I know Karim Buksh. On 9th Bhadra last I went to his house at sunset. His house is a quarter or half a mile from mine. I had a case in the Civil Court in which Karim Buksh was a witness for the other side; there had been talk of a compromise and I went to Karim Buksh's in order to get him to try to bring the compromise about. That case was at Hakimpur. It has since been disposed of. When I left my house that night it was clear, but by the time I got to Karim Buksh's it had come on to rain, with high wind. I returned home that night. The rain and wind lasted about two *ghoris*. I started home from Karim Buksh's about one prohor after sunset. I know Ismail Jagirdar's *bari*. Karim Buksh's house is north-west of Ismail Jagirdar's. My house is a little west of south from Ismail Jagirdar's. I saw four men carrying a dead body from east to west by the southern bank of Ismail Jagirdar's tank. I recognized some of them. They were Sadak Ali, Aslam, Yakub Ali and a man whom I could not clearly recognize owing to his being under cover (tale) of a tree, but who looked like Abdul Halim. Sadak Ali, Yakub Ali, and Aslam are among the accused in the dock (identifies them). There is a ghat to the tank by Ismail Jagirdar's *doroja*. The men were carrying the corpse towards that *ghat*. I saw this from a distance of four or five cubits. There is a narrow path by the south bank of the tank, and they were taking the body along that path. I asked them who they were? They then set down the corpse under a *badir tree*: I was going towards it and asking what it was, when Sadak Ali abused me and told me to be off. The body was placed face downwards, and I could not recognize it as they threatened me. I ran homewards along the road. I had run for about a kani from that place towards the west—my house is west of that place—when I saw eight men conversing together on the road at the place where Naimuddin's *doroja* joins it. Among them I recognised Naimuddin Miji, Imdadulla, Abdul Hakim Kabiraj, I could not recognize the others. Abdul Hakim Kabiraj is own brother to the accused Yakub Ali. I told Naimaddin Miji what I had seen. He said "go your own way rascal, what business is it of yours." I passed by them towards my house. After going a little way I felt frightened. I called to Abdul Aziz from his *doroja*. I called him twice, and then he came and asked what was the matter. I told him all the circumstances. He accompanied me for some distance on my way home. Next morning about one *prohar* after sunrise as I was ploughing I received certain information. I then went to Ismail Jagirdar's house. At his *doroja* I saw his dead body floating in the tank, with the feet to the south and the head to the north. I saw the Jemadar from the thanna there a little while after I got there, the Jemadar took the body out of the tank. I know Amjad Mir, his son, has married Osman Ali Daroga's daughter. I know Hamida Thaka. After the body had been taken up out of the water and when the *surothdl* was being written, I saw Amjad Mir and Hamida Thaka near the Jemadar. I beckoned to them to come a little way apart, and when they did so I told them that the night before I had seen the dead body being carried along by the four persons I have named. They said "don't tell anyone now, wait till the Daroga comes and tell him." The Jemadar wrote out the surothal and chalaned the body to the town and I came away. I did not go to Ismail Jagirdar's house on the Monday. We are cultivators and have our work to do. I deposed before Osman Ali Daroga at Ismail Jagirdar's *doroja*. That was on Tuesday. I told him everything. Amjad Mir and Hamidullah were present when I deposed. Hamidullah and Hamida Thaka are one and the same.

Cross-examined: I have never been convicted in any theft case, but I have been fined Rs. 5 for disobedience of summons. I do not remember that Renu Mir ever brought any theft case against me. I do not remember being punished in any such theft case. No *badmashi* proceedings have ever been instituted against me. I was not an accused in the murder case of Robicha Bibi. My house is north-west of Ichakhali Hât. Yakub Ali, accused, lives in the same *bari* as Karim Buksh. I can't say if there is any road passing to the west of Karim Buksh's and Naimuddin's baris and leading south. From Karim Buksh's house I went first south, then east, then turned south again. I came by the road which lies south of Emdadullah's bari and which passes to the west bank of Ismail Jagirdar's tank. That way is not a Government road—it is a path along the bank of the tank. There is no high road (*boro rasta*) to the west of Ismail Jagirdar, Naimuddin Miji and Karim Buksh's houses. I have never passed by that road. I have seen a number of *baris* there, but no public road. I had come round the south-west corner of the tank and had gone four or five cubits east from the corner. I was then turning to go south, when I saw the dead body on my left-hand side. From there I passed towards Naimuddin Miji's *doroja* and there I met the eight men sitting and consulting. I was on the south bank of the tank when I saw the body, not on the west, but I was nearer the west end than the east. I deposed before the Police Saheb. I did not tell him that I saw the four men carrying the body by the west bank of the tank. There was star-light that night, and it lightened every now and then. It was a dark night, the *amavasya*, but there was

star-light and flashes of lightning. I told the Police Sahib so. I thought it was a dead body; it looked like one. I told the Sahib it looked a dead body, but the Sahib did not understand me and Koilash Kerani explained it to him and what Koilash Kerani said I don't know. I did not tell anyone at my house of what I had seen. Nanda Basi's house is closer to mine than Ismail Jagirdar's is. He is not conducting this case. I have not seen him here. There was a constable besides the Jemadar the Sunday I went to Ismail's and saw his body in the tank. I did not see Idris there. There were many persons present when the body was taken out. I did not recognise any number of Idris' household amongst them. Tuku Munshi and Naimuddin Miaji were there and Mahabbat Ali Miaji. I spoke to Amjad and Hamida in preference to them because they are rustics, whereas Amjad and Haimida conduct cases and know about law. Nur Mir, constable, came to my house on the Tuesday and told me to go to the Daroga. It was 10 or 11 a.m. when I deposed. I deposed and then went away. I don't know who deposed before me. I met Torab Ali on the way as I was going there—he was coming away. He was on the south bank of the tank and was going east—he was as far from the place where depositions were taken as from here to the veranda (say 10 yards). I did not see Hosan Ali there. Nanda Basi and Nanda Thakur were not there. Idris was there, he was not at any one place but was going about crying. I did not see him near me when I was giving my evidence. There is a cutchery hut at the *doroja* of Ismail in which there were a number of people. Idris was sometimes in that hut and sometimes going to and from the inner apartments. The cutchery hut is 16 or 17 cubits from the place where I was giving my evidence. I gave my evidence in an ordinary tone, not so loud as I am speaking now. The Daroga told me to speak quietly, as he had a headache. He took down my evidence on Bally paper. The people who were near me heard my evidence, eight or nine people heard—Chatur Ali, Haider Ali, Jafar Ali, Naimuddin Miaji, Abdul Karim and others. I don't remember whether or not I told the Deputy Magistrate that Idris was present when I deposed. I did not see the Police Sahib when I deposed. After deposing on that Tuesday and before I was examined by the Police Sahib, I saw the Daroga. I saw him at Ismail Jagirdar's *cutcheri* hut where he slept on a bed. He said to me "you have given your evidence why do you come here again?" He said that if I came back any more he would run a bamboo up my posterior. This was on the Thursday after I deposed. I do not know Bharat Babu. I did not tell the District Superintendent of Police of this threat of the Daroga, but I spoke about it to a stout gentleman who used to fish in the tank of accused. I also told that stout Babu about the occurrence. I don't remember whether I spoke to him on that Thursday, or afterwards, but I remember speaking to him at the *doroja* of one of Ismail's tenants who lives to the west, where the Babu was fishing. The case at Lakimpur was a suit for *wasilat* brought by my younger brother: the defendants in that case brought another title suit, against that brother and myself. Those two cases were both compromised in Agrahan. Hosan Ali, witness, and I deposed in a theft case against Muzuffer on behalf of the accused. I don't know whether or not Mozuffer was convicted. I gave my evidence and came away.

Re-examined: Karim Buksh's house and Emdadullah's house face the east. I have never been imprisoned. It was after Torab Ali came away that the Daroga called me to give evidence.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

The 12th January, 1901.

14th January, 1901.—Re-called (being present in Court) and further cross-examined with leave of Court. I have land at Chur Pagla. It is not true that I went there on Sunday, 9th Badhra, and came back on Tuesday.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

The 14th January, 1901.

V.—SARODA MOHAN CHAKRAVARTI, Sub-Overseer.

The deposition of prosecution witness No. 5, aged about 24 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 12th day of January, 1901.

My name is Saroda Mohan Chakravarti. My father's name is Kali Chandra Chakravarti. I am by caste Brahman. My home is at Mouza, Duttapara, Police

Station Lakimpur, Zilla Noakhali. I reside at present in Mouzah Sudharam, Police Station , Zilla , where I am Sub-Overseer of the District Board.

I prepared a plan in this case under orders of the District Engineer. Exhibit 5 is that plan, it is correctly prepared. I measured the roads with a chain. I measured from E to I *viâ* O P Q and R. From E to F is 2,080 feet, from F to O 2,200 feet, O to P 890 feet, P to R (*viâ* Q) 2,255 feet. From F to G is 870 feet, G to K 3,000 (*viâ* H I J), K to R (*viâ* L M N) 2,800 feet. The difference of length in the two roads is 1,325 feet. There are breaks in the western road. One between E and F a common one: another between O and P; another between P and R. The biggest break is the one between P and R, it is 60 feet long. That break is two feet deep.

By the Court: I mean that the bottom is two feet below the level of the road.

Examination-in-Chief: I made this measurement on the 18th November, when I measured the breaks were dry. The westernmost road shown in my plan is a mere footpath, it is almost on the level of the fields. There is no break on the easternmost road; I have shown none. There are some breaks there, but they have all been bridged in such fashion that carts can pass. Ashraf Ali Mukhtear was with me when I took the measurements and pointed out the houses marked on the side of the road. I also enquired of two villagers whose names I don't remember. Idris was also present, but there was a man on the opposite side who objected to his saying anything, and so I did not ask him anything. On the 20th November the District Engineer tested the plan and the measurements in my presence.

Cross-examined: There is a break between E and F 60 feet long and 1½ feet deep. There are no breaks between B C D and E. I did not go by the way through Gura Mir's *doroja*—that way has not been shown in my plan. I did not measure the distance from Char Uria to Bellu Sahib's Hat, as it was common to both the alternative routes. The water in the rains is about six inches below the level of those roads. The breadth of the break between Q and R is eight or nine feet. The depth of two feet is in the centre of the break—at the edge it would be not more than nine inches from the level of the road. There was less rain this year than last but I can't say if there was less than the average.

Read by the witness himself and by him admitted to be correct.

A. Pennell,
Sessions Judge.

A. Haidar,
Sessions Clerk.

Saroda Mohan Chakravarti,
S. O. B.

The 12th January, 1901.

VI.—Binod Behari Pal, District Engineer.

The deposition of prosecution witness No. 6, aged about 45 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 12th day of January, 1901.

My name is Binod Behari Pal. My father's name is Umesh Chandra Pal. I am by caste Sadgop. My home is at Mouzah, Calcutta, Police Station , Zilla I reside at present in Mouzah Sudharam, Police Station , Zilla , where I am District Engineer.

The District Magistrate sent me a written order to prepare a plan in this case. I had the plan prepared by my subordinate Saroda Mohan Chakravarti, the last witness. He showed me his plan, and I tested such portions of it as I considered important. Exhibit 5 is the plan which he prepared. I checked the distance from E to R *viâ* F O P and also *viâ* F G H T K. I did not compare my measurements with Sarada Babu's, but I noted my own measurements. The red ink measurements in the right-hand margin of the plan are mine. They are in my handwriting. I found four breaks in the road from E to R *viâ* F O P. Of these the first is common to that road and to the road from E to R *viâ* F G H T K. Except that first break there are no breaks in that second route. The first break from R along the route R *viâ* P O and F is 60 feet long by two feet deep. I generally take the maximum depth. The second break is 20 feet long by nine inches deep, and the third 50 feet long by one foot deep. The common break is 60 feet long by 1½ feet deep. There are ditches along the western road but no continuous drain. The difference in length between the two roads is 1,325 feet.

Cross-examined: I did not note the minimum depth of the breaks, it would not be very different from the maximum, it might be three inches or six inches less. I don't think it would be as much as nine inches less. I did not go from east to Bellew Sahib's *Hat*. I can't say if the rainfall this year was below the average. I have not seen these roads in the rains.

Read by the witness himself and admitted to be correct.

A. PENNELL,
Sessions Judge.

The 12th January, 1901.

VII.—ABDUL AZIZ (son of Aminuddin).

The deposition of prosecution witness No. 7, aged about 40 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 14th day of January, 1901.

My name is Abdul Aziz. My father's name is Aminuddin Miaji. I am by caste Musalman. My home is at Mouza Char Uria, Police Station Sudharan, Zillah Noakhali. I reside at present in Mouzah there where I am cultivator.

I know the witness Islam. I met him about one *prahar* after sunset, on the 9th Bhadra last. He called to me from the *doroja* of my *bari*. I was in my hut at the time. I went to him and he said "come with me little way I am afraid" (or have got a fright). He said "I was coming by the west bank of Ismail Jagirdar's tank when I saw three or four men carrying something which looked like a dead body." I asked him if he had recognized the men, and he said "yes, they were Sadak Ali, Aslam and Yakub Ali. I did not ask him anything more. I then went some way with him, and then came back home. I presented a petition to the Magistrate. Osman Ali Daroga threatened me because I gave evidence and so I petitioned. (Admits two signatures to Exhibit 4.)

Cross-examined: Kalabhanga *dighi* is a mile or a mile and a half from Ismail Jagirdar's house. There is a road leading to the witness Islam's house which passes to the west of Naimuddin Miaji's house. There is another road which passes by the east of Yakub Ali's *bari* and the west bank of Ismail Jagirdar's tank—it is a path. This last path passes to the south of Emdadullah's *bari*. There is another road which passes by the south of Emdadulla's *bari* and the east of Ismail Jagirdar's tank. The space between the road to the west of the tank and the road to the east of the tank will be not less than 300 cubits. Of these three roads from Yakub Ali's house to Islam's house the shortest is the middle one, which passes to the west of Ismail Jagirdar's tank. Most people go by this middle road. Yakub Ali and Karim Buksh live in the same *bari*. I was sitting in my hut when I was called. I deposed before the Daroga Osman Ali. I forget what date it was, but it was at Peshkar's *Hat*. Several others were examined by the Daroga at the same time. It was seven or eight days after the occurrence. It was a market day. The Daroga took down my deposition. I did not tell anyone of the occurrence before I deposed. I don't know Inspector Bharat Babu. A constable and a peon called everyone at the hât to be examined, and so I came to be examined. There was a little rain on the night of occurrence. It commenced a little before sunset, and went on till a *ghari* after sunset. There was no storm (*tufan*) when Islam called me, it was quite clear and there were stars. There were clouds in the sky but not overhead. I am not connected in any way with Islam. I had no talk at that time with Idris. I have never had any talk with him. It is not the fact that Ismail's brother has married my niece. I was summoned to appear before the Police Sahib and on the day fixed for my attendance, the Daroga told me not to give evidence. This was at Doctor's Hat. The witness Rajab Ali and several others—hat people—were present when the Daroga spoke to me.

Amjad, Aslam and Ahmed Ali were among those present. About two *gharis* after day-break the morning after the occurrence, I went with others to Ismail Jagirdar's house. I saw the dead body floating and came away. When I deposed before the Daroga, I did not see any Government Officer present except constables. This year I tapped the date palms of Ismail Jagirdar's *bari*. Sadak Ali, son of Bukshi Putwari, lives near me. I don't know of his conducting the prosecution. I do not know that anyone named Sadak Ali is conducting the prosecution.

By an Assessor: I knew Idris before the occurrence. I did not tell him what Islam had told me.

By the Court: I did not see Idris the morning after the occurrence when I went to his house and saw Ismail's body floating in the tank.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

VIII.—Abdul Aziz (son of Samaruddin).

The deposition of prosecution witness No. 8, aged about 32 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 14th day of January, 1901.

My name is Abdul Aziz. My father's name is Samaruddin. I am by caste Musalman. My home is at Mouza Char Durbesh, Police Station Sudharam, Zilla Noakhali. I reside at present in Mouzah there where I am cultivator.

My Khalato *bhai*, Arshad Ali, is *ijaradar* of the ferry from Lambakhali to Char Lakhi. That Arshad Ali, my brother Abdul Majid and I with some *mallas* ply the boat. I know the accused Aslam and Sadak Ali. On the night following Saturday, the 9th Bhadra, at 2 or 3 a.m., I saw them at Ichakhali Bazaar, which is about 10 kanis from Lambakhali. I had some talk with them. They said "what *manjhis* are there here," I said I was a *manjhi*. They then asked "when does the boat start"? I said the flood tide would commence at 2 or 3 a.m., and then when the boat would leave for Char Lakhi. It was Sadak Ali who first asked: Aslam joined in the conversation afterwards. Sadak Ali came first and woke me up. Aslam came behind him. After telling them the boat would leave at 2 or 3 a.m., I asked how many of you are there? They said "we two." I asked where they wanted to go, and they said "to Char Pagla." I said that owing to the rain there were no other passengers and there were six or seven of us: it would not pay us to take them to that Char. They said "we will consider a bit and give you enough to make it pay you." I asked how much they would give. Sadak Ali said one rupee. I said even two rupees would not suffice. Then Aslam offered two rupees. I said that would not do. Then Sadak Ali offered three rupees. I demanded four. Sadak Ali said we would consult some other people and let me know. The two men then went away. They did not return. The regular fare from Ichakhali to Char Pagla is two annas per head. I know Osman Ali Daroga. I did not depose before him.

Cross-examined: I know Nanda Basi, his house is 10 or 15 kanis from the port (*bandar*) where I stay. I can't say whether he is conducting the prosecution. He never came with me to the Committing Magistrate's Court. I have not seen him at this Court. I have been at the same place as the other witnesses while attending this Court. If we had been paid four rupees we would have gone. I did not suspect the two men. I never came down in my demand. I demanded four rupees all along. I deposed before Kali Sankar Babu. I told him that I demanded five rupees. At first I asked five and then came down to four. I deposed before Mathur Babu, the Inspector who challaned the accused. I don't remember telling him that I suspected something wrong because the men offered me so much. I felt sorrow (*afsos*) for the men, because the regular fare was only four annas, and they had to offer me three rupees (*sic*). I told Hosan Ali Chowkidar and other passengers on the boat and other people in those parts of the conversation I had with the accused. I told them before Mathur Babu's investigation. I gave out the matter a day or two after it happened. I did not tell anyone that night. The afternoon before that night, we had returned from Hatya at 3 p.m. We are allowed to take passengers to Pagla Char. Abdul Karim Manjhi was punished for taking passengers there. My house is half a mile from Ichhakhali. it is on the other side of the *khal*. There was rain and a little wind from a little before sunset. It stopped at two *gharies* after sunset. After that it was clear. There was star-light. There were a few clouds about. It was not on account of any storm that there were no passengers that night—sometimes there are passengers and sometimes not.

Re-examination: The sorrow (*afsos*) in my mind was because it occurred to me how anxious they were to cross. They could have got over by paying a fisherman a rupee. Abdul Karim was fined because he was not the Ijaradar, and plied without having the right to do so.

By an Assessor: I did not ask Sadak Ali why he was so anxious to cross. We get Rs. 4, 5, 10 or 15 a journey to Char Lakhi. It all depends on what we carry—it is not only passengers we take but animals, &c. I knew Sadak Ali and Aslam before.

By the Court: We stay at Ichhakhali on account of passengers. There is no *khal* for our boat at Lambakhali.

Explained to the witness in Bengali and admitted to be correct.

A. Pennell,
Sessions Judge.

A. Haidar,
Sessions Clerk.
The 14th January, 1901.

IX.—Rajab Ali.

The deposition of prosecution witness No. 9, aged about 25 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 14th day of January, 1901.

My name is Rajab Ali. My father's name is Roshan Ali. I am by caste Musalman. My home is at Mouzah Char Uria, Police Station Sudharan, Zilla Noakhali. I reside at present there, where I am cultivator.

I know the four accused in the dock. I saw them on the 9th Bhadra just as the sun was setting, on the road under a *bat* (banian) tree. Some were sitting and some standing. They were talking together. Ismail Jagirdar's house is about three-quarters of a mile from that place. It is south-east of that place. I know Osman Ali, Daroga. I deposed before him and told him all this. This was about three days after I saw the accused. I heard of Ismail's murder the day after I saw them but did not go to his house. I petitioned the Magistrate against Osman Ali Daroga, because he threatened us (Admits his signatures (two) to Exhibit 4). When I had gone a little distance, and it was coming on to rain, I saw the men were going along that road towards the west. I passed by the east bank and then by the south bank of the Utsara Dighi towards the west. I saw them going west by the north bank of that Dighi. Sadak Ali and Aslam are chachato jyethato bhai (cousins) and live in the same *bari*. The father of Yakub Ali and of Abdul Hakim Kabirarj is Ali Manjhi's cousin. They are chachato jyethato bhais. Osman Ali, Daroga, is that Ali Manjhi's nephew (*bhagina*). Amjad Mir and Osman Ali are *bihai* to each other (*i.e.*, their children have married). Sadak Ali accused's mother was that Amjad Mir's fufato bhagini (cousin).

Cross-examination: I live a little less than a mile from Sadak Ali and Aslam. I am not related to them. I went to their house once with Amjad Mir; he and I used to cultivate together, and we went there with a cart. That was two or three years ago. Amjad Mir used to cultivate, but I can't say if he cultivates now. He did not use to cultivate himself. He is a *bhadralok*. I don't know the father's name or residence of Sadak Ali's mother. I don't know how many *fufa's* (father's sister's husbands) Amjad had. I don't know that he has any *fufu* (father's sister). I don't know that he has any *fufato bhagini*. The father of this Abdul Hakim in Court is choudhari, and his father's name is Natullah. I don't know Ali Manjhi's father's name. I say that Ali Manjhi and Abdul Hakim's father are cousins, but I can't say what the exact relationship is. I don't remember what day of the week it was when I deposed before the Daroga, but it must have been a Sunday or a Thursday, for it was at Peshkar's *hat*, which is held on those days. There were many people present when I deposed. I don't remember the Inspector being present that day. On Sunday after hearing of Ismail Jagirdar's death, I told many people of what I had seen. I knew Ismail's son Idris before the occurrence. I told him afterwards, whether before or after deposing before the Daroga I don't remember. I met the Daroga once after my examination by him and before my examination by the Police Saheb. That was at Doctor's *Hat*. He served me with a notice to attend before the Police Saheb, and at the same time told me not to give any evidence. I don't remember whether or not I met the Daroga after that. The Police Saheb went to see the place of occurrence and called us again after he had examined us. The day after he returned the Daroga Osman Ali abused and threatened us at Peshkar's *Hat*.

I have land in Pagla Char. So has the witness Islam. His land is a mile from mine. I did not go to Chur Pagla that Saturday. I went on the Friday and returned Saturday morning. I did not go to the Chur again for four or five days. The place where I saw the man was to the east of the tank (Utsara *dighi*), it was near a bridge on the Government road. To get to Ismail Jagirdar's *bari* from the town, you may go either to the north or to the south of his tank. The way to Ismail's house from the town by the Kalabhanga *dighi* is a little perhaps 15 minutes shorter than the other. I live a little more than half a mile from Utsara *dighi* There was high wind and rain to about two *gharis* after sunset that night. It began while I was on the road. I went on home. I did not stop anywhere. I got wet. Soon after I got home the rain stopped. I was imprisoned for two months in a rioting case. Nanda Basi's house is about half a mile, and Sadak Ali, son of Bakshi Patwari's house about quarter mile from mine. I do not know of their conducting the prosecution. That Sadak Ali is here in Court (points to a man close to accused). I am not connected with him in any way.

Explained to the witness in Bengali and admitted to be correct.

A. Pennell,
Sessions Judge.

A. Haidar,
Sessions Clerk.

The 14th January, 1901.

X.—Abdul Mir.

The deposition of prosecution witness No. 10, aged about 45 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 14th day of January, 1901.

My name is Abdul Mir. My father's name is Asabuddin Mullah. I am by caste Musalman. My home is at Mouzah Salla, Police Station Sudharam, Zilla Noakhali. I reside at present there, where I am taluqdar and howladar.

I knew Ismail Jagirdar. I met him one Saturday in the early part of Bhadro last. I forget the date—after sunset—in front of the entrance to my house, on the Government road. Ahmed Ullah and Abdul Aziz, constables, were with him. They were coming west from the direction of the town. Ismail Jagirdar's house is a mile to the south-west of mine. The day after I heard that Ismail had been murdered.

Cross-examination: Ismail did not call me. He had a piece of new cloth under his arm. He had on a *piran* (coat) a sheet and a shirt and was carrying an umbrella. It was raining at the time—raining hard. There had been some high wind, but it had lulled. I asked Ismail to stop at my house, but he did not. He and the other men were going at an ordinary pace. The rain stopped about two *gharis* after sunset. It was dark at the time I met Ismail. It was still dark when I went to bed, which was about four *gharis* after sunset.

By the Court: Ahmadullah lives near Bairagi's *Hat*, about a mile from Ismail. Abdul Aziz's house is close to Ismail's, about 10 or 12 *kanis* distant.

Explained to the witness in Bengali and admitted to be correct.

A. Pennell,
Sessions Judge.

A. Haidar,
Sessions Clerk.

XI.—Ahamadullah.

The deposition of prosecution witness No. 11, aged about 25 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 14th day of January, 1901.

My name is Ahamadullah. My father's name is Tamizaddin Munshi. I am by caste Musalman. My home is at Mouzah Chur Uria, Police Station Sudharam, Zilla Noakhali. I reside at present there, where I am taluqdar.

I knew Ismail Jagirdar. I met him on Saturday the 9th Bhadro last at Asad Mullah's *doroja*. I can't say what relation the last witness (Abdul Mir) is to Asad Mullah. Abdul Aziz, constable, was with me. I was returning home from the town and met him on the way. Ismail Jagirdar was going towards his home from the direction of the town. My house is about 1½ miles from Ismail's. We all three went together as far as Kala Bhanga *dighi*—near there we separated, Ismail going by the southward road which passes by the east side of the *dighi* while we went by the Government road which leads to the west by the north bank of that *dighi*. Ismail was alone when he parted company with us. I deposed before Osman Ali Daroga two or three days afterwards. I heard of Ismail's murder at 8 or 9 a.m. on the day after I met him.

Cross-examination: Ismail's house is a little under a mile from the Kalabhanga dighi. It was raining when we got to Asad Mullah's *doroja*, it was *just after sunset*. The *dighi* is less than half a mile from Asad Mullah's *doroja*. It was raining hard when we got to that *doroja*. Abdul told us to stay there, but we did not stop. The rain had not begun to abate when we got to the dighi: it began to abate half a mile or a mile after we left Ismail Jagirdar. The constable's house comes first, mine is further off from the *dighi*. Ismail's house is not so far from the dighi as mine is. The rain had stopped before I got home. It was 1½ or 2 *gharis* after sunset when I got home, not more, that is my guess (*anumanik*). I saw a bundle under Ismail's arm. I don't know what was in it. He had a shirt on—I saw that—but I did not notice if he had any coat (*piran*). He had an umbrella. There was star-light that night. The Daroga never threatened me or told me not to give evidence.

Explained to the witness in Bengali and admitted to be correct.

A. Pennell,
Sessions Judge.

A. Haidar,
Sessions Clerk.

The 14th January, 1901.

XII.—Kali Kumar Das, Pleader.

The deposition of prosecution witness No. 12, aged about 56 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 15th day of January, 1901.

My name is Kali Kumar Das. My father's name is Podma Lochan Das. I am by caste Kayastha. My home is at Mouzah Sadardi, Police Station Bhanga, Zillah Faridpur. I reside at present in Mouzah Sudharam, where I am Pleader, Munsiff's Court.

I knew Ismail Jagirdar. I used to conduct his cases. I heard of his death on the 10th Bhadro' corresponding to the 26th August last. I had seen him the day before, both at my lodging and at Court. His wife had brought a revival case and he was a witness in it. He came to my lodging at 9 or 10 a.m. He gave evidence in the case that day. His deposition was finished at 5 or 5.30 p.m. The defendants in that case were Abdul Karim and Karim Buksh. Of the accused in the dock I know one Sadak Ali. He had cases against Ismail Jagirdar. I am engaged as pleader on behalf of the plaintiff, Ismail Jagirdar, in the case of which the record is shown to me brought by Ismail against Aslam, son of Lukhi Goldar (suit No. 1881 of 1900 of the Court of the First Munsiff of Sudharam). That suit is still pending. I am also engaged as pleader for Ismail Jagirdar, plaintiff, in the suit which he brought against Anwar Ali, and of which record is shown to me (suit No. 1882 of 1900 of the same Court). That suit also is still pending (these records are marked as Exhibits 6 and 7).

Cross-examination: In this year and last year Ismail Jagirdar has instituted five or seven cases against his tenants on his own account and two or three on account of his wife. On the 26th August there were pending, I think, three cases of his own and one of his wife's. He brought only one enhancement suit, it was against a tenant living in another village. He may have brought one or two ejectment suits. He gave evidence in one or two cases on behalf of Bhulua Raj.

By an Assessor: The pending suits of Ismail's were the two I have mentioned and one against one Gura Mir. All three are simple rent suits.

Explained to the witness in Bengali and admitted to be correct.

A. Pennell,
Sessions Judge.

A. Haidar,
Sessions Clerk.

The 15th January, 1901.

XIII.—Abdul Latif.

The deposition of prosecution witness No. 13, aged about 35 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 15th day of January, 1901.

My name is Abdul Latif. My father's name is Guna Mir. I am by caste Musalman. My home is at Mouah Chur Uria, Police Station Sudharam, Zilla Noakhali. I reside at present in Mouzah Sudharam, where I am peon of the Government *khas mehals* and *taluqdar*.

I know Osman Ali Daroga and Amjad Mir. They are *behais* (*i.e.*, their children have intermarried). Amjad Mir, is my uncle (*chacha*). I know Sadak Ali. Amjad calls Sadak Ali, nephew (*bhagina*) and the two men are on visiting terms. I know Hamida Thaka, he is Amjad's brother's son. I was present when the Police investigated this case. Amjad Mir and Hamida looked after it on behalf of the accused. I know Ashak Jemadar's road. It passes by the west of Ismail Jagirdar's house. There are two small breaks and one large break in that road. In the rainy season people can pass over the small breaks without wetting their cloths but not over the big break. The road is close to my house. We do not use that road in the rainy season. We go by the road to the east. When there is heavy rain the whole of the western road goes under water.

Cross-examined: It is not the fact that the road east of Ismail Jargidar's house is lower than the western one. The western road is lower than the eastern. This year there was less rain than usual. This year the western road was only under water here and there—wherever it was lower than usual, not merely at the breaks. The big break is 30 or 40 cubits long by 10 cubits broad. It is a little lower in the middle than at the ends, it may be up to one's waist in the middle. At the sides it is a little less, say 1¼ or 1½ cubits deep. It is very muddy besides being under water. I have sometimes been to Ismail Jagirdar's house. There is a way into that *bari* by the north and west sides of the tank, but it is dark and people don't go that way at night. That way is not shorter than the way by the east and south sides of the tank—the two ways are of equal length. So far from the way by the north and west being wider, it is narrower than that by the east and south banks. When I was present

at the Police investigation it was Osman Ali Daroga who investigated. I forget what date—it was in Bhadra. I went there two days in the day time and two other days at night on my way home from office. The first of the two days when I attended in the day time the Daroga went to the houses of the accused. On two subsequent days he was sitting in Ismail's *cutchery*. The fourth day I saw him when the Police Saheb went to see the road. That time I was present in the day time. The two occasions when I saw Osman Ali at Ismail's *cutchery* were at night. I don't have to go to work till 10 a.m. That is how I came to be present in the day time. The day the Police Saheb came he arrived at 10 a.m. and went away at 12. I went along with him: he went to Ismail Jagirdar's *bari* and stayed there for an hour. From Ismail's *cutchery* he went to measure towards the south, along with the Daroga. That visit of the Police Saheb was after the Police Saheb's examining the witnesses. I don't remember if Amjad and Hamida were present on that occasion. They were present the day the Daroga went to the houses of the accused, and also on the two nights I went to Ismail's house—they were talking. I don't remember other people being there, except constables and Chowkidar, but I remember that one day Ram Kumar Daroga was there. I did not hear what Amjad and Hamida were saying. When the Daroga went to Emdad Ullah accused's *bari*, all the accused assembled there. The Daroga did not go there, but Amjad and Hamida went. I did not go there. I cannot say what sort of *bhagina* (nephew) Sadak Ali is of Amjad. Amjad Mir's father married my father's *fufu* (paternal aunt) that is how Amjad is my *chacha*. My house is as far from Amjad's as from here to the school, or a little more—it will be about a mile. When my father died about three years ago, Amjad sold his share of the inheritance, and since then he has not been to eat with us and has had nothing to do with us. My great grand aunt whom his father married is also dead. I have never entertained Sadak Ali. I gave evidence in defence of Ismail in the case in which he was accused of cattle theft. It is not a fact that Sadak Ali, son of Bakshi, is conducting the prosecution—(then) I can't say if he does or not. My daughter has married that Sadak Ali's nephew.

Re-examination: I was cited in the cattle theft case to identify the cow, as I was *chaprasi*, under the forester of Tunchar where the cow was kept.

By the Court: Ismail Jagirdar never brought any case against Guna Mir (my father).

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.
The 15th January, 1901.

XIV.—ANA MIR.

The deposition of prosecution witness No. 14, aged about 35 years, taken on oath or solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 15th day of January, 1901.

My name is Ana Mir. My father's name is Kuramadin Chaprasi. I am by caste Musalman. My home is at Mouzah Chur Uria, Police Station Sudharam, Zilla Noakhali. I reside at present there, where I am cultivator.

I know Ali Manjhi. He is my *fufato bhai* (cousin). I know Osman Ali Daroga. He is Ali Manjhi's *fufato bhagini's* (cousin's) son. I know accused Yakub Ali in Court. His father is Ali Manjhi's *Jyethato bhai* (cousin). I know Muna Bibi, she is Ali Manjhi's sister. Osman Ali's mother is her *fufato bahin* (cousin). Muna's husband is named Riazuddin. Muna now lives with Osman Ali. Riazuddin died in Osman Ali's house.

Cross-examination: I don't remember how many brothers Ali Manjhi's father had, nor do I remember that he had any brother. I have seen Yakub Ali's father, his name was Chowdhry. I can't say what his father's name was. Ali Manjhi's father and Chowdhry were *chachato jyethato bhais*. I can't say how many times they were removed. My father had four sisters, one was Ali Manjhi's mother, another was mother of Samarudin Chaprasi. I can give the father's name of Ali Manjhi and of Asgar Ali, who is son of another aunt of mine, but I can't give the names of my other two *fufas* (father's sister's husbands), they died long ago. I have been to Ali Manjhi's house. I can't give the name of Osman Ali's mother, nor can I say whose daughter she was. I am related to Osman Ali. I have never been inside his female apartments, nor have I ever been to his house. Muna Bibi belongs to the cultivating class. Her husband died, and she was friendless, so she stays with Osman Ali. She works for him and he feeds her. Ali Manjhi used to ply a boat, he now cultivates. I

can't say if he is a *bhadralok*. He has some property. Muna Bibi is his own sister. He does not like her so she stays with Osman Ali.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

The 15th January, 1901.

XV.—HARI DAS DAS.

The deposition of prosecution witness No. 15, aged about 42 years, taken on oath or solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 15th day of January, 1901.

My name is Hari Das Das. My father's name is Nakul Das. I am by caste Haliadas. My home is at Mouzah Ichakhali, Chur Uria, Police Station Sudharam, Zilla Noakhali. I reside at present there, where I am cultivator.

I live about a quarter of a mile from the road passing to the west of Ismail Jagirdar's *bari*. My *doroja* is on a village road. There is a break on the road which passes west of Ismail Jagirdar's *bari*. That break is close to my house, on the north It is 40 or 45 cubits long. It is 50 or 60 cubits from my house. The water at that break is up to one's chest in the rains when there is heavy rain. It is always 2 or 2½ cubits deep at that season. People do not pass by that road in the rains. They pass by the road east of Ismail Jagirdar's house.

Cross-examination: Nanda Basi is not related to me in any way. We are of the same caste, that is all. During the rains this year it was impossible to cross that break without wetting your cloth. I do not know of Nanda Basi's conducting this case. Nanda Basi lives half a mile from me.

By the Court: Nanda Basi is a Haliadas.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

The 15th January, 1901.

XVI.—RAM DHON BARUA, Constable.

The deposition of prosecution witness No. 16, aged about 50 years, taken on oath or solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 16th day of January, 1901.

My name is Ram Dhon Barua. My father's name is Bedi Chand. I am by caste Barua. My home is at Mouzah Nowapara, Police Station Raojan, Zilla Chittagong. I reside at present in Mouzah Sudharam, where I am Police Constable.

In this investigation of this case I went to Ismail Jagirdar's *bari*. I forget what date it was—it was in Bhadro last. I forget what time it was when I got there—it was early in the morning (*behane*). When I got there I saw Ismail Jagirdar's corpse floating in the tank in front of his house. By order of the Jemadar I and others took it out. Ismail was dead. I saw marks of bruises on the body. Kisto Bhadra, the Jamadar, sent it through me to the hospital. The Jamadar examined the body and wrote something. He put me in charge of the body. I took it to the dead house. I made it over to the Doctor Saheb in the same state in which I received it. The Doctor Saheb examined it and cut it up in my presence. By the Doctor Saheb, I mean Bara Doctor, I don't know his name, he is a Bengali.

Not cross-examined.

By the Court: Yesterday I went to Haris Chandra Bhuiya *hat*. I went there because the Daroga Saheb sent me as the Inspector-General was going. By the Daroga Saheb I mean Osman Ali Mia. I was sent to look after the horses to see if the dak was laid or not. I have been sent on dak on two or three previous occasions. I told the Daroga I had to attend this Court, but he told me I could come back, and give evidence afterwards. The Daroga is still working as a Sub-Inspector. I have not seen the Police Saheb last night or this morning. I returned to the town about

5 or 5.30 p.m. yesterday. There are eleven constables at Sudharam Thana. I can't say how many there are in the lines.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

The 16th January, 1901.

XVII.—MOHIM CHANDRA DEY, Constable.

The deposition of prosecution witness No. 17, aged about 51 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 16th day of January, 1901.

My name is Mohim Chandra Dey. My father's name is Ram Moni Dey. I am by caste Kayasth. My home is at Mouzah Panchashhat, Police Station Munshigunge, Zilla Dacca. I reside at present in Sudharam, where I am constable.

I am attached to Sudharam Thana. A warrant for the arrest of Mohabbat Ali, a witness in this case, was made over to me. I made three separate attempts to arrest him. The first time, on the 7th January, I went to his house at Chur Uriya and I got there at 3 p.m. but did not find him. I remained at his house all night and searching other houses in the village returned at 9 a.m. next morning. On the 8th January I received a fresh warrant and went with it to Mai chura and Bhola. I went there because I had heard at his house the first day that I went there that he had gone to cut wood. I did not find him. I returned on the 10th—yesterday. I went again to Chur Uriya and Char Durbesh and went to Mohabbat Ali's house at noon. I did not find him. I have only just come back. I produce Exhibit 23 the second warrant made over to me. It was received by me on the 8th January. I returned the first warrant to the Court. Exhibit 24 is that first warrant, the one which I received on the 7th January. The return on the back of it is my return and bears my signature.

Not cross-examined.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

The 16th January, 1901.

XVIII.—Mr. W. Y. REILY, District Superintendent of Police.

The deposition of witness No. 1, called by Court, aged about 38 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 16th day of January, 1901.

My name is William Yates Reily. My father's name is James Horatio Reily. I reside at present in Mouzah Noakhali, where I am Superintendent of Police of this District.

I have been District Superintendent here three years all but three months. I received a summons in this case. I was cited as a witness by the defence. On the 9th January I paid the Sessions Judge a visit at his house. It was an official visit. I came to inform the Judge that I had received an order to go out and enquire into a case and also that the D. I. G. was expected to arrive—and I came to ask whether I should go out or stay here, as I had been cited as a witness in this case. I wished to remain in on account of the D. I. G.'s visit but the necessity for my coming to the Judge was caused solely by the order I had received to go out and enquire into a case. I had received that order from the District Magistrate. The case I had to enquire into was of Lakimpur Police Station. As far as I recollect the Judge told me that I must remain in for this case. The Judge told me then that he intended to call me as a witness himself. I informed the District Magistrate of the orders which I had received from the Sessions Judge. I informed him verbally. He said nothing beyond saying it was a pity I could not go out with him, he also mentioned he would address the Judge on the subject. The District Magistrate was going to Churgazi and Hatia. He had, however, intended to go with me to the place of occurrence. On Monday morning the Judge came to the circuit house and I saw him. He advised me to apply for a transfer in connection with this case. I asked the Judge to speak to the D. I. G. to help me in getting a transfer. I spoke about the subject to the D. I. G. myself that

afternoon. The explanation I have to give of my absence yesterday is that I had informed the Judge that the D. I. G. was going away on Tuesday. I did not receive any order that I was to be examined before Tuesday. I fully intended to return this morning. I did not think I would be required till after my return. I would have returned this morning even without the telegram from the Judge which I received yesterday. This case was first reported as a drowning case—I think about the 25th August. The first I saw of the case was the information of the unnatural death. Exhibit 1 is the first information in question. It does not bear my initials. I saw the death reported in the daily report. I can't recollect on what date. I went out to the spot on the 28th August. I arrived at the house of the deceased at 8 a.m. that day. I went to test the enquiry as subsequently the case had been reported under Section 302, Indian Penal Code. The enquiry was made by Sub-Inspector Osman Ali, supervised by the Inspector of A Division, Bharat Chunder Mozumdar. Osman Ali was present when I went out there on the 28th August. I don't remember if the Inspector was present then or not. On the 28th I examined complainant and his mother. I also spoke to one of the accused, who was Chowkidar of the *mohulla*, but did not examine him. That was all I did that day. I left the place for Noakhali about 10.30 a.m. It—the deceased's house—is about 3½ miles from Noakhali. It was on the 27th August, on the first information report, that I gave the order to Bharat Babu to supervise the enquiry. The report shown me (Exhibits 25*a* and 25*b*) is that on which I passed my order. The English handwriting (on 25*a*) is mine. I don't know whose the Bengali handwriting is. The English handwriting submitted, etc., at the foot of the next report (Exhibits 26*a* and 26*b*) is that of the Inspector Bharat Chunder Mozumdar. The marginal notes on that diary are in the writing of the Court Sub-Inspector Kristo Kishore Kar. I can't say whose is the Bengali handwriting of Exhibit 27*a*. I don't remember ever having seen the special diary (Exhibits 27*a*, 27*b* and 27*c*) before. In special report cases, the special diaries and reports are read out to me in office, and every such diary or report is initialled by me. This is a special report case. I can't say how it is Exhibit 27 was not initialled. I may be allowed to add that I initial all special diaries and reports that came to my office. I don't initial any others. Special diaries in a case like this should come to my office, the rule is that they should. I cannot account for this particular one not coming to my office. I was summoned to produce the special diaries of this case, so far as I know those handed to me by the Court are the special diaries. So far as I know there are no others. I see that none of those diaries, other than those submitted by me personally bears my initials. I can't say for certain that I have ever seen any of those Bengali diaries before. I am surprised at finding that none of them bears my initials. Every diary should bear my initial. I did not go to the place of occurrence again after the 28th. What I did in the case was to supervise the enquiry from the office by seeing the diaries, as they came in every day from the 28th—I mean the Sub-Inspector's diaries—the special diaries.

The Government Pleader here brought to the notice of the Court that there were two sets of diaries, of which one came to the Court Sub-Inspector, and the other to the District Superintendent of Police. The witness volunteered: I forgot to bring that fact to your notice—what the Government Pleader says is right.

(The diaries were here sent for, and after some little time some papers were brought.) The papers which I now hand in are the special diaries. They seem complete. They all bear my initials. (These papers are here marked as Exhibits L 1 to L 62 inclusive, each sheet being separately marked.) The way in which I exercised my supervision from the Police Office was by passing orders—written orders. The first such order I passed was on 29th August. It is "the Sub-Inspector must make every endeavour to trace the accused." The next was on the 31st August—it is "the Sub-Inspector should have recorded their statement under Section 161." By "they" I meant the accused. The third order was on the 1st September. "The Sub-Inspector does not seem to have questioned the accused as to the actual occurrence whether they were present. The Inspector must see that important points are made quite clear." I passed no more orders till the 18th September. In the meantime I believe on 6th September I received Exhibit 3 (petition) from the District Magistrate. I read the petition after so receiving it and made my notes on it, and sent it back to the District Magistrate. The marginal notes on it are in my handwriting and were made by me on the 6th September. I sent back the petition to the District Magistrate that very day. Beyond looking at the Police papers I took no other steps to test the truth of the petitioner's allegations. The only test I had made of the enquiry when I wrote these notes was that which I made on the 28th August and which I have already described. By my note "incorrect, no such evidence has been elicited" I merely meant that in the papers which the Police put up before me no such evidence was to be found. The District Magistrate drew my attention to paragraph 5. I looked at paragraph 5. I saw it stated there that Osman Ali was related to most of the accused. I made some enquiries as to the truth of that by asking the Inspector. I think I asked the Inspector and the Head Clerk. By the Inspector I mean Bharat Babu. As far as I can recollect they both told me that Osman Ali was not related to any of the accused. I am sure the Head Clerk said so, and I think the Inspector said so too. As far as I recollect I did not ask Osman Ali himself upon the subject. My marginal note as to Amjad Mir having been called by the Inspector was based on the statement of the Inspector himself made to me during my supervision of the enquiry. I don't remember whether he told me that before or after I received Exhibit 3. As far as I

can recollect the Head Clerk was present when I received it. I am not certain if the Inspector was present. I did not consult either of them before returning it. It was not by my orders that Ram Dhan Baura was sent away yesterday: the only order I gave was that constables were to be placed on dawks for the D. I. Genl. I can't say without seeing the morning report how many constables I have in Noakhali now. Osman Ali is still on duty at the Sadar Thana. He is Sub-Inspector in charge of it. The District Magistrate Mr. Ezechiel ordered A form to be submitted in this case. The District Magistrate is head of the Police. I am only head of the Police under him. It did not occur to me when he ordered A form that it was desirable to remove Osman Ali from the charge of the Sadar Thana. I have heard that one of the witnesses attending Court in this case was arrested by a town constable named Isaf Ali. I have not seen the first information in that case. First information came to me—but I have been busy with the D. I. General's inspection and have not been looking at the papers. They have been at the office but I have not looked into them yet. Town constables are under the Sub-Inspector of the Sadar Thana. I do not remember its being brought to my notice that no recognizances were taken from the witnesses in this case.

At this stage the Court rose for the day, the witnesses being directed to be ready to attend Court at 11.45 a.m. to-morrow, and not to leave the station without written permission from the Court till judgment in the case was delivered.

A. PENNELL,

Sessions Judge.

The 16th January, 1901.

The 17th January, 1901.—Case resumed.—The witness further examined by the Court. I now find from the morning reports of the 14th, 15th and 16th that on each of those days there were ten constables present at the thana. In the lines there were 25 constables of the District reserve besides. I returned Exhibit 3 to the District Magistrate on the 6th September. I can't recollect if I ever got it back again. I have seen the District Magistrate's order on the petition dated 7th September. I believe I saw it in the office—in my own office. I cannot be sure that I saw it the same day it was written, but it was either that day or a day or two after. The marginal order of 7th September is in Mr. Ezechiel's handwriting. The blue and yellow pencil writing on Exhibit L 40 is that of Mr. Ezechiel. I received that order from him on the 7th and passed my own order in red ink below it on the 7th. I believe I got that order in office. I can't say for certain whether I got the petition with the marginal order of the 7th or the slip L 40 first. On the 7th September I directed complainant to produce his witnesses. As far as I recollect I did so at office. It was after I saw the Magistrate's marginal order on Exhibit D 3. On the 9th September complainant appeared before me and stated his inability to produce or give a list of his witnesses. He did this verbally. I recorded this statement under Section 161. Then on 10th September complainant produced a list of witnesses in writing. I now hand in my own special diaries. (These diaries and some other papers handed in with them are marked as Exhibits B1 to B28 inclusive, each sheet except one with no writing on it being separately numbered) they are complete. (The witness volunteered.) I wish to correct my statement. It was at the circuit house, not in office, that complainant stated his inability to produce his witnesses. I live at the circuit house. The complainant gave in his list, I believe, in the office. I submitted my first special diary at 6 p.m. on the 9th September. Exhibit B 1 is that special diary. I sent it at 6 p.m. to the office—to my own office. I sent all these diaries to my own office. As far as I recollect I did not submit them to the Magistrate. I am not aware of any rule that they should be submitted to the Magistrate, but I think they ought to have gone. The object in writing these diaries was to show the work I had done each day. My wish was to inform the District Magistrate—but I didn't send him the diaries. I knew when investigating this case that serious charges were made against my subordinate police. The Head Mohurir Upendra Nath Bose keeps all the diaries. I can't say whether the Head Clerk kept them or not. Before this Head *Mohurir* I had another Head *Mohurir* named Rajendra. He was transferred to Khulna last year—I think about September or October. Before he was transferred I suspended him. I suspended him on the verbal report of the Head Clerk Koilash Chunder Dey, made to me at the circuit house. I don't know whether Rajendra's transfer to Khulna had anything to do with his suspension—the Deputy Inspector-General transferred him. He was under suspension when he was transferred to Khulna. I drew up certain charges against him—I believe it was after suspending him. Nothing further has been done on the proceedings which I drew up against Rajendra since his transfer. In addition to my proceedings the Head Clerk brought a charge against him but I allowed it to drop. I remember the case of Empress *versus* Mohesh Chandra Guha. I was cross-examined in that case at very great length two or three days I believe by Mr. Das, a Barrister.

Q.: Did not Mr. Das all through ask you questions tending to show that you were completely in the hands of Koilash Babu your Head Clerk?—*A.*: That was the tendency of his questions.

Examination continued: I have not read the evidence Rajendra gave in that case. I believe Rajendra did state in evidence that Osman Ali called Koilash father. Koi-

lash Babu was Head Clerk when I came to this District. I don't know how long he had been in the office before. I can't say exactly how many years Osman Ali has been here but he was here when I arrived. I cannot say whether Koilash and Osman Ali are on good or bad terms. I believe the tendency of the defence in Empress *versus* Mohesh Chunder Guha was to show that Osman Ali through Koilash had passed off the stolen notes through a shop in which Koilash and Mohesh's son and co-accused Kumudini were partners. I did not even though I knew that make any enquiry as to the terms on which Koilash and Osman Ali were.

Q.: Did you think when sending these special diaries to the office that the natural result of your doing so would be to inform not the District Magistrate, but Osman Ali of what you were doing in the case and of what the witnesses said?—*A.*: No Sir. I did not think of that at all. It did not strike me.

It did not strike me when complainant came to me at the Circuit House and said he could not give a list of his witnesses, that one possible reason was that he did not wish the Police to know beforehand what witnesses he was going to get me to examine. When complainant submitted his list, I issued summons to the witnesses through my office and through the Sudder Station, of which Osman Ali was in charge. I ordered the office on the 10th September to issue summons. Summonses were for the witnesses to attend on the 12th, at the office, at the Police Office. Exhibit B4 is the list complainant gave me. The initial and date on it are in my handwriting. I examined the complainant's witnesses at the Police Office, from 1.30 to 4.30 p.m., on the 12th September. I believe the Head Clerk was present when I examined them. I put questions to the witnesses and those they did not understand the Head Clerk translated to them. I did not understand all their answers. What I did not understand the Head Clerk translated. The complainant had no pleader or mukhtear with him. He was present all along himself. There was no one on complainant's side who knew English and could have said if the Head Clerk translated wrong. I questioned the witnesses shewn in the margin of the Special Diary as 6 to 21 and 23 to 28. I noted in my diary that they knew nothing of the occurrence. I don't recollect those witnesses or some of them saying that they had heard the other witnesses, the eye-witnesses deposing before Osman Ali, that they had witnessed the murder. I knew when examining those witnesses on the 12th, that in Osman Ali's diaries there was no mention of anyone having told him that they had seen the murder committed. On the 13th September, I examined the accused. I did nothing else on that day. On the 14th I went down to the place of occurrence and drew up a plan of it. I did not finish any plan on the 14th. I went down again on the 15th. On that date I finished the plan. I did nothing else that day. After finishing the plan I went and saw the District Magistrate, showed him the plan and told him what I had done. That may have been two days after. He told me afterwards to submit B form. I did not submit any written report to the District Magistrate till he ordered me to do so. I do not recollect if I showed him my diaries. I am not sure if I told him what the witnesses had said. Eventually, on the 28th September I submitted a C true form with my own remarks. The C form was drawn by Sub-Inspector Osman Ali. The papers shown me are the C form and my remarks. (These papers are marked as Exhibits Y1 to Y8, cash sheet being separately marked as before.) The order in the C form under date 28th September is in Mr. Ezechiel's handwriting. I sent Exhibits Y1 to Y8 to Mr. Ezechiel. I did not take them to him. I do not think I had any conversation with him before he passed that order to send up A form. The reason why I sent up C form instead of B form was that the accused had not been arrested.

On reading it over the witness stated I meant that C forms and not B forms are submitted in cases when the accused are absconding.

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Q.: But is not B form for cases in which the accused are absconding?—*A.*: Yes.

Besides that the District Magistrate informed me to look up Osman Ali's diaries again. I believe that if I had sent up B form warrant would at once have been issued against the accused. B form is applicable only to cases when you know the accused but can't arrest him. The District Magistrate ordered me to send the Inspector down to arrest the accused and submit B form. I sent the Inspector down to the place to arrest the accused, it was the Inspector B. Division. I know his name—but don't remember it—it was Mathur Babu—Mathura Nath Guha. I believe he arrested some of them, but some he could not find. I believe he arrested some of the accused before I submitted C form. I submitted C form instead of A form, because I myself did not believe the case. When I have arrested an accused I can't submit B form. I have to submit either A form or C form. Before I submitted the C form I consulted Osman Ali and the Inspector Bharat Babu. We talked over the evidence. They did not advise me to submit any form—I myself said I thought it would be better to submit C form. I can't recollect if they expressed an opinion that the case was false. I never went out to the place again after the 15th September. I have always considered Osman Ali to be of good detective ability—whenever I have had anything specially difficult to do—any specially difficult case I have usually put Osman Ali on it. He has been

The witness corrects on reading over to B form is submitted in cases where the accused is arrested before the Police before the investigation is finished, and there is not sufficient evidence to send him up.

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the only Sub-Inspector I have had whom I could depend on for a difficult case. I believe I have recommended his promotion. I believe he has been promoted while I have been here. He has received a watch and a medal while I have been here. I have had every confidence in him.

Cross-examined by Babu Radha Kanto Aich for Accused: When I recorded the complainant's statement on the 9th he gave the names of some witnesses. That was at the Circuit House. He named Torap Ali, son of Bakshi Chowkidar of Chur Uria, Wasil father's name not known of Chur Uria, Abdul Karim, father's name not known of Chur Uria and Ismail, father's name not known of Chur Uria. He simply said that some of these witnesses saw his father killed. He did not say which of them. I don't recollect complainant's saying on the 10th, which of his witnesses had witnessed the occurrence. I had no conversation with him when he filed the list of witnesses. I do not remember that the list was handed over to me by a clerk of Jasoda Babu, Mukhtear. Exhibit B7 is the *hazira* or list of witnesses submitted to me on the 12th. I believe the witnesses came with the complainant.

By the Court: Complainant with his witnesses appeared before me. I did not see them coming as I was inside the office.

Cross-examination: The colloquial Bengali of these parts is more difficult to understand than ordinary Bengali. I had some idea of what the witnesses said even when I had to get the head clerk to translate. If I could not understand the whole answer of the witnesses, I perhaps might not be able to detect mistranslation by the head clerk. So far as I am aware, I did not detect any such mistranslation. I know the Bengali equivalent of the word "dark" and of the word "waist." I also know the equivalents of wife and mother. Hosan Ali stated to me that it was six *gharis* of the night. It was dark. It had been raining, but the rain had stopped. He also said that the first accused (Sadak Ali) held Ismail by the neck and the other two Aslam and Anwar Ali by the waist. He also stated to me that he did not tell of the occurrence to his wife, mother or to any member of his household. He said, we also told this to Atar Ali whom we met at the gate of Har Chunder's house. Without referring to the diary I cannot remember what the witness said. (The witness had been saying "yes" to questions asked him by the pleader reading from the diary.) Torap Ali said that the night was dark and it was raining a little. He also said that when we met Atar Ali he was about half a mile from Hur Chunder's house. He also said that Nanda Basi, Nanda Thakur, Hosan Ali and some others were present when he gave his evidence before the Sub-Inspector. He also said "we were examined by the Sub-Inspector on a Tuesday the 7th or 8th Bhadro at about one *prohar* of the day." Islam stated before us that "I cannot say whether the man being carried was dead or alive." He said that "the night was dark, but it was not raining then. I saw this by the flashes of lightning." I do not find that any of those three witnesses told me there was star light.

At this stage the Court adjourned for the day.

18th January, 1901.—Case resumed. The witness further cross-examined by Babu R. K. Aich, pleader for the accused.—I actually made a plan of the place of occurrence. Exhibit A is that plan. I have never seen Abdul Mallah, but I believe he resides somewhere about there. I have shown his house in the plan. I saw a tank called the Kalabhanga tank. That is also shown in Exhibit A. The distance from Kalabhanga *dighi* to Abdul Mallah's house would be about one quarter of a mile. I went over the place and so I can say that. The distance from that *dighi* (tank) to the deceased's house would be about three-fourth of a mile. I myself went over the three roads shown in Exhibit A. On the 2nd day, the 15th, the witnesses Torap Ali and Hosan Ali were with me. On that day I finished and went over this side—the side including the three roads. I asked them both to show the road they had taken in coming from Bellew Saheb's *hat* to their respective houses. The road they pointed out was Binode Bepari's road. It was past the tank. They came from Bellew Saheb's *hat* by Bairagi *hat* road and Benode Bepari's road, and when they got to the points marked R and S in the plan they say they saw the occurrence. Benode Bepari's road passes by the tank—Kalabhanga tank—by the east side of it. Bairagi *hat* road passes by the north side of that tank. I should say the more direct road to their houses would be Guna Mir's road or Arshak Jemadar's road. I asked the men why they took a more circuitous road instead of the direct one. They could not assign any reason. I think Islam was with me on the 14th September, when I was making the plan of the 1st day. I did not think it necessary to remove Osman Ali from the Sadar when the District Magistrate ordered A form because I had no suspicion in my mind against him. I can't say for certain how long Osman Ali has been in service. He has all along I believe been in this district. He worked up his way from a constable. For a short time, I believe, he was in Barisal or Jessore, I am not sure which—for about three months (all these latter statements volunteered). I believe he has been in Government service for more than 25 years. He is in the second grade of Sub-Inspectors. I believe Osman Ali was given the watch in the time of my predecessor Babu Rash Behary Biswas. The chain was given him by the District Magistrate, on recommendation. I did not ask Osman Ali at the time about the allegations in paragraph 5 of Exhibit 3, but I asked him some days after. Some days after I asked the Head Clerk and the Inspector. When I went to the place on the 28th

August the complainant did not, so far as I remember, speak of any relationship between Osman Ali and the accused. The complainant did not before applying to the Magistrate on the 6th September apply to me to have the investigation made by some other officer. I did not draw Exhibit A myself. It was drawn by the aid of the Court head constable. But I was present all along. That head constable's name is Mohim. The Inspector Bharat Babu was with me on the 15th when I went over the roads with Torap Ali and Hosan Ali. He was also present on the 14th. It is a fact that in all these cases three sets of diaries are prepared, the original remains at the Thana, one copy is sent to my office and another copy to the Court Sub-Inspector's Office. When the Magistrate wants to see any diaries, he sends for those which are in my office and for those in the Court Sub-Inspector's Office. In special report cases of which this is one I write special reports from those diaries. Some special reports go to the Commissioner through the District Magistrate. Some special reports go to the Inspector-General direct. I think I have made a mistake. I think the reports to Inspector-General do go through the Magistrate.

On being read over the witness corrects to :—The Magistrate can see either the diaries in my Office or the Court Sub-Inspector's—either of the two.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

By the Court: There are no special reports which stop short with the District Magistrate.

Cross-examined: In this case, I sent such reports to the Magistrate for transmission. I know Joshoda Babu Mukhtear. I examined him in this case. I believe he was conducting the case for the prosecution. I don't know Nanda Basi. I believe I did make some enquiries as to Osman Ali's calling Koilas father. As far as I can remember there was no suspicion in my mind, after I made those enquiries, that the statement was true. When I suspended Rajendro there were several other charges against him besides the verbal statement of the Head Clerk. Rajendro went up against my order to the Magistrate and the Commissioner.

Cross-examined by Babu Tarak Chandra Guha, Government Pleader for the Crown: I did not ask complainant what fact would be proved by what particular witness. I don't recollect whether he told me then and there that he would file a list of witnesses afterwards. After referring to my diary, I say, though I cannot say from memory, that he said he could produce other witnesses and would file a list of them. I cannot make out anything from Exhibit 5 at all. Exhibit A represents the true state of things so far as I know. I cannot say for certain whether or not the road I call Gura Mir's road is on the same level with the paddy fields. I believe there is a break somewhere near the junction of Arshak's road and Gura Mir's road towards the south. It would be about 20 or 30 yards from the junction. There may have been other breaks, but I do not recollect that there were any other breaks on Arshak Jemadar's road. Arshak Jemadar's road is the one which passes to the west of the deceased's house. The length of the break I saw was about the length of that table (say five feet) and the breadth would be about the breadth of the witness box (say one foot nine inches). I cannot swear that the length of that break was less than 60 feet. I passed along the road on horse back. There was some water in that break. As far as I recollect I asked some of the villagers to go into the water and test if it was deep or shallow. I found the water not to be deep. It was a little below the knees, more than a cubit. The break has not been shown in this map (Exhibit A). But it may be an omission on the part of the Court head constable who copied it. I have the rough map at my office and it is shown there.

(The Government Pleader then asked the witness to send for this rough map and the witness did so.)

Cross-examined: I signed Exhibit A without comparing it with the rough map prepared in the locale. I did not measure the length of the roads. I have not entered things in my own handwriting in the rough map. I can't say Exhibit 5 is wrong; but I can't trace things from it. I can say from my knowledge of the locality that the map, I now have before me, the one marked Exhibit A is correct. Exhibit A*a* is the rough map I spoke of.

By the Court: I last saw Exhibit A*a* the day before yesterday.

Cross-examination. *Q.*: And this rough map was also drawn not by you—by Mohim, head constable?—*A.*: Yes, in my presence.

Cross-examined: I have noted the break in that map. The two black pencil lines (within which Exhibit A*a*1 is now written) are the notes I made. I did not note on the map that those two lines represented a break. That is the only break that I found. Binode Bepari's road is on the east of the deceased's tank. On the 28th August when I went to the mofussil Osman Ali showed me the place where the deceased was said to have been attacked and I saw certain signs there on the spot. The marks looked to me as if there had been a struggle at the spot. I should say by guess that the distance from that place to the deceased's house is about the distance from my office to the District Board Office. I should say about 100 yards. By house, I mean hut. The distance from the place of struggle to the tank would be about 70 or 80 yards. I have not noted the distances in my map (then). I may have, but I can't say for certain. Referring to Exhibit A*a*, I do not find that it has been noted. I did

not go on the 28th August to the houses of the accused Sadak Ali and Aslam. I only went to the house of the deceased.

Q.: Osman Ali has stated in his diary that you went there. Is that correct?—*A.*: I can't recollect. I may have passed the houses on the road.

Cross-examined: I reached the place at 8 a.m. and returned at 10 or 10.30 a.m. As far as I remember I asked the Sub-Inspector where the accused were. As far as I can recollect, I don't think I found or met with any of the accused on that occasion with the exception of the village chowkidar, Osman Ali chowkidar. It is a fact that I found the houses of Sadak Ali and Aslam deserted. That there was no one there. I believe so. I went to the *bari* of Torab Ali witness. I did not find him there, but I cannot say if he was there or not. I examined his wife. I can't say if he was there. It is a fact that in the absence of the permanent Government Pleader Khan Bahadur Bazlur Rahim conducted the case for the prosecution in the Lower Court.

Q.: Can you render into colloquial Bengali the expression star, star light?

Question by the Court: What do the people here call it?

The witness hesitated for a long time and then said.

A.: *Sat prohor*, I think *sat prohor*.

Cross-examined: The Head Clerk only translated those portions of the witnesses' answers I could not understand. I cannot swear looking at the depositions recorded by me which answers he translated. As far as I can remember I think the depositions were read over to the witnesses. They were translated to the witnesses by my Head Clerk. I think there is not any note in the depositions recorded by me that they were read over. I put questions to the witnesses. I do not remember that anyone suggested any questions to me.

Q.: Did your Head Clerk suggest any questions?—*A.*: At present I can't recall to my mind that he did.

Cross-examination: I can't swear that he did or did not. I cannot say if Amjad Mir is the *punchayet* of the village of the deceased, as I made no enquiry on the point. I may have made enquiries when Exhibit 3 was received and hence I came to know that he was *punchayet*. I think I made the enquiry in office—I think from my Head Clerk.

Q.: Having regard to the seriousness of the allegations that Amjad Mir was a relation of the investigating officer, and that he was helping the accused, did you make any enquiry into the truth or falsehood of the allegation that Amjad Mir was a *punchayet* of the village?—*A.*: I cannot recollect that I did.

Cross-examination: I cannot say from my personal knowledge whether Amjad Mir is related to Osman Ali. I believe Osman Ali was called upon by the Sub-Divisional Officer Feni to show cause why he should not be prosecuted under Section 211 in nine salt cases which he challaned. Those nine cases were transferred from the Court of the Feni Sub-Divisional Officer to that of Babu Ashutosh Banerji here. Yes, I believe Ashutosh Banerji has dismissed all those cases. I have not as yet taken any action against Osman Ali after the dismissal of those cases. Those cases were dismissed before the puja vacation. I know that a certain number of cases which Osman Ali had sent up in C Form were directed by Mr. Ezechiel to be sent up in A Form. It is a fact that in some of those cases convictions were obtained. I did not take any steps against Osman Ali after convictions were obtained in those cases—except calling for explanations.

Q.: Am I to understand that after receiving explanations you dropped the whole matter?—*A.*: I don't think I have dealt with all the explanations as yet.

Cross-examination: I know the Lambakhali road. Osman Ali did not point out to me that road as the one which led from Bellew Sahib's Hat to the houses of witnesses. I know of a case in which Hamid Ali Chowkidar was complainant and Sirajul Hak accused—decided by Babu Sarat Chunder Sen, Deputy Magistrate. It was a case of cattle lifting. I did not take any action upon Sarat Babu's remarks against Osman Ali in that case.

By the Court: (At suggestion of Babu R. K. Aich). Yes, I believe an enquiry was made into those remarks under my orders—by the Inspector—by Bharat Chunder Mazumdar.

By the Court: Osman Ali was present when I first went to deceased's house on the 28th August. He was present on the 14th September at deceased's house. I met him again on the 15th by Bairagi Hat road. What I said about the three sorts of diaries does not apply to my own diaries, those prepared by myself. No copy of them is sent to the Thana. It was in the morning of the 9th September so far as I remember that complainant came to me at the Circuit House; it may have been about 9 or 10 a.m. I think I had finished with him in about half an hour. I can't exactly recollect who was present when I examined him. I do not as a general rule have any Police Officers at my house at that hour. I finished with complainant before breakfast. I did not send in any diary till 6 p.m. I did nothing else in the case in the meantime. I sent in my diary to my office at 6 p.m., either the Head Mohurir or the Head Clerk took it.

I don't usually have them at my house at that time. I think I made over the diary in the office. No one helped me to draft that diary. (It had first been shewn to the witness whom I asked to read it over.) It was suggested to me in the trial of Mohesh Chunder Guho that my Head Clerk does help me to draft diaries. He has as a matter of fact once or twice helped me to draft them. The expression "pleaded his inability" in Exhibit B1 is mine.

Read over by the witness himself and admitted to be correct.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

DEPOSITIONS OF WITNESSES FOR DEFENCE.

I.—KRISHNA CHANDRA BHADRA, Head Constable.

The deposition of defence witness No. 1, aged about 41 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 21st day of January, 1901.

My name is Krishna Chandra Bhadra. My father's name is Buddhimant Bhadra. I am by caste Keyesth. My home is at Mouzah Kistanagar, Police Station Nabinagar, Zilla Tippera. I reside at present in Mouzah Sudharam, where I am Police Head Constable.

I investigated this case in the end of August. I went to the place when the occurrence was reported as an unnatural death. I made a *surothal* (report of the condition) of the corpse on the day after the occurrence. I made the *surothal* on the 26th August. I despatched the body, but I myself remained in the mofussil. I went round and made enquiries and looked about me. The Sub-Inspector arrived at 2 a.m. on the 27th August. On that day, the 27th, in the day time, I searched certain houses. I searched five or six houses. I forget which. It is entered in my diary—my special diary now in Court (diary handed to witness). I searched the houses of Emdadullah, Abdul Halim, Abdul Hakim, Abdul Karim, Yakub Ali and Aminuddin—those six—some of them were at home, Emdadullah was, and Abdul Hakim and Abdul Karim, and Yakub Ali and Aminuddin. Only Abdul Halim was not found; other houses were searched by the Sub-Inspector, Osman Ali. The Daroga went towards south and I went towards north. Idris was not with me when I searched; there were some villagers with me, but I don't remember their names. Idris went with the Sub-Inspector. I made these searches under orders of the Sub-Inspector, as there were many houses to be searched. No *alamat* (incriminating article) was found in any of the houses of the accused. I went by the west bank of Ismail Jagirdar's tank, there was no water there, but there was a little mud, near the north-west corner. I went by the west bank and then by the north bank till I got upon the road. The way along the north bank was in a good state. I returned at 10 or 11 a.m. to the complainant's house, and found the Daroga already there. I did not do any other work that day. The Daroga was in that same house (*bari*). I do not remember for certain if any witness was examined that day—it would be in my diary. Next day I was at that same *bari*. The District Superintendent of Police came that day. The Sub-Inspector questioned some witnesses that day and the District Superintendent of Police questioned some witnesses, the complainant, his mother and Osman Ali Chowkidar. The Sub-Inspector on that day questioned some of the neighbours. The Saheb arrived at 8 a.m. and went away at 10 or 11 a.m. I was with the Daroga when the Saheb went away, we were both in Ismail's Jagirdar's yard. The Sub-Inspector and I were together the whole day. I know Islam, but I did not know Hosan Ali or Torab Ali till the last few days. None of those three witnesses deposed on that Tuesday before the Daroga (the witness here scratched his ear). I remained at the place for four or five days after. During that time none of those three witnesses deposed.

Cross-examined: The *surothal* which I drew up would be in the Police Office. The rule is that the *surothal* should be in the record. I cannot say without seeing the *surothal* whose names were in it as witnesses. (The question was, was Amjad Mir's name in it as a witness?) I cannot say without seeing it whether Amjad Mir's name was in it or not.

Question by the Court: Will you swear yes or no that Amjad Mir's name was not in the *surothal*?—*A.*: It was not.

Q.: Why did you say just now that you could not tell whether or not Amjad's name was there?—*A.*: I remember that Amjad Mir was not there, that Amjad Mir who is *punchayet* of the village.

Q.: I give you one more opportunity of answering the question. If you do not give an answer I will commit you to jail. You have said that Amjad Mir's name was not in the *surothal*. But you said a few minutes ago that you could not tell without seeing the *surothal* whether his name was in it. What is your explanation?—*A.*: I meant that the name of Amjad Mir who was *punchayet* of the village was not in the *surothal*.

Cross-examined: I cannot say if Amjad Mir was a witness. I know Amjad Mir the *bihai* of Osman Ali. He was not present when I drew up the *surothal*. I know Hamidulla the man called Hamidar Thaka. He was present. He was a witness to the *surothal*. I do not know that he is that Amjad Mir's nephew or that he is connected with him. I did not see Hamidulla afterwards during the investigation. I saw Amjad Mir the *bihai* of Osman Ali on one day during the investigation. In the *surothal matbars* and *punchayets* of the village are made witnesses. There are five *punchayets* of that village—Ram Kumar Das, Tuku Munshi, Amjad Mir and Ram Hari Sil. I forget the other. The Hamida Thaka who was a witness was not a *punchayet* of that village. His house is within a mile of the house of deceased. It is in Pran Jagannath, in another Mouzah. I found him at the place. I found Alamat on the road by the side of the tank—there is a depression and I found foot-prints and knee-prints on both sides of it. A plant about a cubit high called *goada* was broken. The place where I found these marks is north of the *baris* of Sadak Ali and Aslam—it was on the road which leads by the south bank of Ismail Jagirdar's tank. I can't say whether or not the Sub-Inspector in my absence went to the houses of those accused whose houses I searched. On the road which passes to the south of Ismail's tank, there was in one place, for about 10 or 12 cubits, mud and water. I can't say how much water. One could pass by the side of that break through the jungle without getting wet feet. The break to the north side of the tank and that to the south side were about equal. There was a dry space to the side of the break on the north-west of the tank. There are ditches on both sides of that path. At the place where the break is, the sides of the ditch are on the same level with the road. In that month of Bhadro there was water in the ditches. It was past 10 o'clock when the District Superintendent of Police left on the 28th August. The District Superintendent of Police did not go to the houses of any of the accused—to Sadak Ali's or Aslam's house. As the District Superintendent of Police was returning he saw their houses. He went inside their *bari*. There was in the *bari* a boy of eight or ten; no one else.

By the Court:—

Q.: Why did you say just now that the Sahib did not go to the houses of Sadak Ali or Aslam—now you say he did?—*A.*: While he was at that house (*i.e.*, complainant's house) he did not go to the houses of any of the accused, he did so as he was returning.

Q.: How far is the *bari* of Sadak Ali and Aslam from that of Ismail?—*A.*: They adjoin.

Q.: Did you believe just now, when the Government Pleader asked you whether the District Superintendent of Police went to the house of Sadak Ali and Aslam, that he meant to limit his question to the period that the District Superintendent of Police was at Ismail's house?—*A.*: Yes that is what I thought.

Cross-examination: The Sub-Inspector did not on the day the District Superintendent of Police went there, the 28th, depute me on any duty. I was that whole day and night at Ismail Jagirdar's *bari*. I did not go anywhere else.

Q.: Is it not the fact as stated by Osman Ali, that he deputed you that day to make enquiries and that you returned at 10 p.m., and told him that you had found out nothing?—*A.*: I do not remember it.

Q.: Can you swear that you did not go out of complainant's *bari* that 24 hours?—*A.*: I did not go beyond the village.

Q.: I am speaking of complainant's *bari*. Can you swear you did not go out of that?—*A.*: I cannot say for certain.

Cross-examination: I can say for certain that during the whole day the Daroga did not examine the three witnesses, Torab Ali, Hosan Ali and Islam. I cannot say how many witnesses or what witnesses Osman Ali Daroga examined on that day. I did not know Hosan Ali or Torap Ali before. I first saw them in Court. I had never seen them till they came to Court to give evidence. The Daroga examined some witnesses when the Police Saheb was there, but whether I was looking at my diary or paying attention I can't remember (the latter statement volunteered). I was sitting to the north side of the tamarind tree when he Daroga took depositions but how long I remained I cannot say. I cannot say on which side of the tamarind tree the Daroga was seated. I do not remember whether it was in the morning or in the afternoon that the Daroga examined witnesses. Some time I was in the *cutcheri* hut. I can't say at what time I was under the tamarind tree and at what time in the *cutcheri* hut.

Re-examination: Torap Ali, Hosan Ali and Islam were not there. I cannot say what other witnesses the Daroga examined. The *cutcheri* hut and the tamarind tree are quite close. They are 5—7 cubits apart—7 or 8 cubits. The *doroja* of Sadak Ali and Aslam leads east. Their *doroja* is south of Ismail Jagirdar's *doroja*.

By the Court: On the last occasion Osman Ali has been in charge of the sudder thana since 1899, he was also in charge before. I have been attached to that thana for five years. Osman Ali is still in charge of that thana. He has not been suspended. So far as I know no proceedings have been instituted against him by the superior Police authorities. Koilash Chunder Deb is still the head clerk of the Police Office and Mr. Reily is still the Superintendent of Police of this District. I made over my

surothal to the Sub-Inspector Osman Ali on the night of the 27th August. I have not seen it since.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

The 21st January, 1901.

The 22nd January, 1901.—Re-called and further cross-examined by permission of the Court. I do not know any witness Islam. I know Islam who deposed for the complainant. I cannot say without seeing the papers whether Islam was a witness to the *surothal*, it is in my diary. (Refers to diary.) Islam was not a witness to it. I say I know Islam the witness because I had got to know him before. I have been to the mofussil before and so got to know him.

By the Court: I did not say yesterday that Islam was a witness to the *surothal*.

Read over and admitted to be correct.

A. PENNELL,
Sessions Judge.

The 22nd January, 1901.

II.—BHARAT CHUNDER MOZUMDAR, Police Inspector.

The deposition of defence witness No. 2, aged about 55 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. Pennell, Sessions Judge of Noakhali, this 21st day of January, 1901.

My name is Bharat Chunder Mozumdar. My father's name is Ananda Chunder Mozumdar. I am by caste a Baidya. My home is at Mouzah Aidhar, Police Station Kendua, Zilla Mymensingh. I reside at present in Mouzah Sudharam, where I am Inspector of Police.

I supervised the investigation of this case. It was investigated by Osman Ali. I supervised the investigation on the 30th and 31st August and the 1st, 2nd, 3rd and 5th September. I came back every evening to my lodging at Sudharam. Many villagers were questioned. I questioned them and Osman Ali also questioned. I went myself one day—a market day—to Peshkar's Hat, which is close to the place of occurrence and made enquiries of the people at the hât. I do not know the witnesses Hosan Ali, Torap Ali and Islam—not even now. I went to the place of occurrence again on the 14th and 15th September under orders of the District Superintendent of Police. There were many people present there. I have not seen who have given evidence in this case, so cannot say if they were present. Mohim Head Constable prepared a plan on those days.

Cross-examination: I made no record of what witnesses or other persons told me. I have a personal diary. I have sent a copy to the District Superintendent of Police's Office. I don't remember for certain when I first got orders to supervise the investigation. I do not remember for certain whether or not I have ever seen the *surothal* of this case. The rule is that in every case the *surothal* should be with the record. I accompanied the District Superintendent of Police on the 14th or 15th September when the plan was prepared, the roads were not measured. There are roads to the east and to the west of Ismail Jagirdar's *bari*. I saw the draft of the plan as it was made. I did not see that. Looking towards Exhibit A*a*, I can't say for certain if Exhibit A*a* (which the witness examined more closely) is the draft. I cannot remember after looking at Exhibit A*a*, whether or not there was another road to the west of that which passes west of Ismail's *bari*. On the first day the District Superintendent of Police and I came out from Ismail's house to the road which is south of his house and followed it to the Icchakhali. We came out from the *cutchery* hut to the *ghat* and then following the south side of the tank we came to the place where deceased is said to have been murdered and came out to the right on that public road which leads to Icchakhali. That public road passes to the east and south of Ismail's tank. We came to the fourth mile post. On that day we also went to the houses of some of the witnesses which are beyond that mile post and the Sahib questioned some people there. As far as I can remember nothing more was done that day. Next day we went to Bellew Sahib's Hat. Mohim Head Constable also went there. From there we went south-east till we came to the Chur Uria road. I then for the first time got to know the name of the Kalabhanga dighi. We went by the north-east and south sides of that *dighi*. We came by the road which passes east of Ismail Jagirdar's house, the day before we only did the south part of that. We did not go right up to the point we started from the previous day, but after we struck the north bank of the tank went along it towards the

west. Two roads meet there and I remained standing at the junction. The Sahib went south to see the bank, but I did not go with him. The whole time I was there I never went along that road where the breaks are.

Read by the witness himself and by him admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

B. C. MOZUMDAR,
Inspector.

The 21st January, 1901.

III.—MOHIM CHANDRA MOZUMDAR, Head Constable.

The deposition of defence witness No. 3, aged about 24 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 21st day of January, 1901.

My name is Mohim Chandra Mozumdar. My father's name is Girish Chandra Mojumdar. I am by caste Kayesth. My home is at Mouzah Mirwanspur, Police Station Begumgunge, Zilla Noakhali. I reside at present in Mouzah Sudharam, where I am Head Constable of Police.

I went to the mofussil on the 14th and 15th September in connection with this case under orders of the District Superintendent of Police. I went there alone and found Osman Ali and Bharat Babu at the place of occurrence. The Saheb came later. This was on the 14th. I prepared a plan by the order of the District Superintendent of Police and in his presence. I measured the yard, bank of the tank and the *Doroja* up to the place of occurrence. I did not measure anywhere else. I commenced the plan from Ismail Jagirdar's *bari*. I then got to the Ichakhali road. From there the District Superintendent of Police went to the houses of certain witnesses. I showed the names of houses on the way as the District Superintendent of Police told me—he questioned people. The District Superintendent of Police afterwards went to a house and examined a woman. Then we returned. Next day we came from Bellew Sahib's Hat southwards to the Bairagi Hat road. From there we went eastward. I have shown the Bairagi Hat road up to the town. Exhibit A*a* is the plan I made. Referring to it I say that we came by the east side of the Kalabhanga dighi and by Binod Bepari's road and reached Ismail Jagirdar's *bari*. We came to the point K, where deceased is said to have been seized. We came by the south bank of the tank to the *ghat* where the body is said to have been floating. We came by the west bank of the tank and then turned west and by the road shown in the plan reached Ashak Jemadar's road. We went a little way north along that road. Both parties asked us to see a break and we went there. After seeing it we returned. The Sahib, the Inspector, Osman Ali and myself went along that road to the south. We went south as far as the break. We did not go further south. We did not go further as we were in uniform and there was water in the break. I know the witnesses Torab Ali and Hosan Ali. I saw them on the 15th on the Boiragi Hat road. The Sahib asked them which road they had come. They pointed out to him the road by the east bank of the Kalabhanga tank. They said they had come there from the west by Boaragi Hat road. We did not go along Guna Mir's road. We came a certain way south from Boiragi's Hat road and then turned back. I also prepared Exhibit A.

Cross-examination: In Exhibit A I have not shown any break. I do not find anything in Exhibit A*a* either to show a break. We did not go southward of the break because we had our uniforms on and there was water and mud. That break is not far from the Ichakhali road which I have shewn in the map. I saw a *modi's* (grocer's) shop on the Ichakhali road; the break will be less than a quarter of a mile from there. There is another break to the north of that I have spoken of; it is 10 or 12 cubits long and 5 or 6 cubits broad. Between these two breaks there were smaller breaks, bridged by bamboos with earth on top. In the south break there was mud and about 18 inches (1 cubit) of water. I did not show the break because the District Superintendent of Police did not tell me to.

Q.: Did you purposely omit it?—*A.*: I put down whatever the Sahib Bahadur told me to (the witness wrong in head).

Cross-examination: He did not tell me not to show the break. I was not bound to show the true state of things. I only put down what the District Superintendent ordered me to. In those two maps Exhibits A and A*a* whatever is shown is correct. I was always with the District Superintendent, Police. I did not go on any road by which he did not pass. We did not go along Guna Mir's road. I went by the two ends of that road, that is how I showed it. I did not go along it. I saw the middle part to a certain distance from each end and made the two meet. Bharat Babu, the Saheb and Osman Ali accompanied me throughout. At the time when we went the *math* (land under crop) was dry (*sukna*).

By an Assessor: I cannot say why I showed both the roads east and west of Ismail's house. I did it because I was told to.

By the Court: There was much talk between the parties as to which road the witnesses would have gone, and the Sahib said, let us see what will happen if we go by each road, and so we went by the western road as well as the eastern. We all—the Police Sahib, Bharat, I and Osman Ali—came back from the break because there was a break and water in it, and we should have got wet. It did not strike me to note in the plan the reason we could not go any further that way, nor did anyone tell me. I am attached to the Sudder Court.

A. PENNELL,
Sessions Judge.

The 22nd February, 1901.

NOTE.—The signature was inadvertently omitted. The deposition was recorded on the 21st January, but as the witness did not wish to read it or have it read that day I did not then sign it.

A. PENNELL

The 22nd February, 1901.

IV.—MAHOMED AMJAD.

The deposition of defence witness No. 4, aged about 45 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 22nd day of January, 1901.

My name is Mahomed Amjad. My father's name is Asabuddin Mir. I am by caste Mussulman. My home is at Mouzah Solla, Police Station Sudharam, Zilla Noakhali. I reside at present in Mouzah there, Police Station , Zilla , where I am Howladar.

I do not know the accused in the dock. I am not connected with any of them. Neither I nor my wife has ever been to their houses. Osman Ali is my *bihai*. My son has married his daughter. I went one day only to the investigation of this case: it was the day this Inspector (pointing out to Bharat Babu) was there. I am not looking after this case.

Cross-examination: I was a *duftry* in the Collectorate. I was not dismissed: I was suspended and never attended there again. I know Tuku Munshi. It is not true that I was first suspended and then dismissed for forging his name. My son has not married Osman Ali's daughter as a "khane damad" (=the Hindu *ghar jamai*, or son living on his father-in-law). I do not know Abdul Latif, the *khas mehal* chaprasi, who has given evidence for the prosecution, nor did I sell any property to him. All my properties have been sold in execution of a decree of Luchman Babu's. That decree is not yet fully satisfied. My dwelling hut has not been sold—no huts in my *bari* have been sold. Hamidullah, who is called Hamida Thaka, is not my nephew: he is no relation of mine. He lives 2½ miles from me. The accused live not less than three miles from my house. I am *punchayet* of their village. The Inspector sent a *dafadar* for me, and I therefore came to the place of occurrence three or four days after Ismail Jagirdar's murder. I never went there before or after. No one—neither the village Chowkidar nor anyone else—informed me that such a murder had taken place in my village. I had heard of the murder before the Inspector sent for me. I had heard that Osman Ali Daroga had gone to investigate. There was rain and storm and I was unwell, and so I did not go to the place. It is not true that I went to Ismail Jagirdar's *bari* on the 10th Bhadra and became a witness to the *surothal*.

By the Court: I did not go to his *bari* on the 10th Bhadra—(then) I went on the day the Inspector went, but I don't remember the date.

Cross-examination: I do not remember that I have ever been punished criminally. I do not remember that I was ever fined. Hamida Thaka brought a case against Kabil, and Kabil brought one against Hamida. I do not remember that I gave evidence on behalf of Hamida in either of those cases. Those two cases were within the past twelve months.

Re-examined: There are five *punchayets* of Chur Uria, including myself.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

The 22nd January, 1901.

V.—Ali Manjhi.

The deposition of defence witness No. 5, aged about 70 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 22nd day of January, 1901.

My name is Ali Manjhi. My father's name is Badradin. I am by caste Musalman. My home is at Mouzah Solla Bharatkal, Police Station Sudharam, Zilla Noakhali. I reside at present in Mouzah there, Police Station , Zilla , where I am cultivator.

I do not know this accused Yakub Ali. I am not in any way related to him.

Q.: Do you know Osman Ali Daroga?—*A.*: I have seen him at the Thana. I am not related to him.

Examination continued: My house is 10 or 12 *kanis* to the east of Peshkar's Hat.

Cross-examined: I do not know Ana Mir, son of Karamuddin Chaprasi. It is not true that my mother was his father's sister. He is not related to me at all. I cannot give the name of my maternal grandfather (*nana*). His name was not Kala Gazi. I am the sole surviving son of my father. Muna Bibi is my sister. Her husband's name was Riazuddin. He is dead. He is buried at Osman Ali Daroga's house. He used to live in that *bari*; he served there (volunteered). Muna Bibi is not now in that house. Sometimes she stays with me, and sometimes with her brother. Riazuddin had a *bari*. Part of it has been washed away, but part remains. I don't remember my mother's name. I never saw any brother of hers. I used to live at Culcutta, and so did not see if she had any brother. I used to come home now and then. I did not stay all along at Calcutta. My mother's father's house is a long way from mine; it is somewhere in Balam Chur. I have never been to it. My mother died before the cyclone (of 1876).

Explained to the witness in Bengali and admitted to be correct.

A. Pennell,
Sessions Judge.

A. Haidar,
Sessions Clerk.

The 22nd January, 1901.

VI.—Islam Manjhi.

The deposition of defence witness No. 6, aged about 35 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. Pennell, Sessions Judge of Noakhali, this 22nd day of January, 1901.

My name is Islam Manjhi. My father's name is Karimuddin. I am by caste Mussulman. My home is at Mouzah Chur Uria, Police Station Sudharam, Zilla Noakhali, where I am cultivator.

I am a cultivator and have a boat. I ferry people from Ichakhali to Chur Bihari. I know Islam and Rajab Ali. I live a quarter of a mile from Ismail Jagirdar. By Islam and Rajab Ali I mean the witnesses of those names. I heard of Ismail Jagirdar's death on the 12th or 13th Bhadro. I was then at Chur Bihari. Chur Bihari has no other name. Pagla Chur is another name for it. I have land there. When I heard of Ismail's death on the 12th or 13th, Islam and Rajab Ali were there, and also others. I left home for Chur Bihari on the 8th or 9th Bhadro. Many people went with me—Yasin, Ahmed Ali, Amiruddin and Dewan Ali. The day I got to the chur, I found Islam and Rajab Ali there. I reached the Chur the same day I left home. I returned home on the 12th or 13th—the day after I heard of the occurrence. Islam and Rajab Ali returned in the same boat with me. We go to Peshkar's Hat and Doctor's Hat on market days. Ducks and *parals* (fish traps) are procurable there, and also pigeons. The people of Chur Uria and Salla mostly do their marketing at those two hats, as they are nearest. Sometimes they go to Sahib's Hat. Betel-nuts (*supari*) are dearer at Peshkar's Hat and Doctor's hat, because those two hats are on a *khal*—they are cheaper at Sahib's Hat and Santasita. At Peshkar's Hat and Doctor's Hat there are several Beparis who come to buy them.

Cross-examined: I have not got any settlement of this ferry from the District Board, but I have taken a sub-lease from their lessee, Islam. I have no registered settlement with him. I have taken settlement for half for Rs. 200. I can't say for how much Islam has taken settlement. I know that Islam and Rajab Ali gave evidence for the Crown from hearsay. I can't say how much land Islam has or what his rent is. Nor can I give these particulars for Rajab Ali. I can't give the boundaries of Rajab Ali's land. Islam is west of mine. Tuku Mia is the only other defence witness who has land in Chur Pagla. Islam's land is bounded north by Afsaruddin Bepari, south by Durga Charan Mohajan, west by a *dona* (=*khal*). There is about half a *kani* belonging to Durga Charan Mahajan between his land and mine. This half

kani is east of Islam's land. I pay rent to Manu Mia's sons. Islam and Rajab Ali have huts there to stay in. I can't say how many bullocks Rajab Ali has there. Islam has two, There is no fixed time for my boat to go or come. I can't say who went to the Chur in my boat in Posh, or on what dates. In this month of Magh Amins have been and some labourers whom I don't know. I do not trade in betel-nuts. I have never been to Bellew Saheb's Hat to sell them. I sold betel-nuts in Bhadro last at Peshkar's and Doctor's *hats*. I was fined Rs. 15 for plying my boat without a license—that was before I took sub-lease. No Karim Buksh gave evidence for me in that case. I did not bring a criminal case against Rajab Ali, it was the ijardars who brought it. Abdul Karim Manjhi, whose boat Rajab Ali plies, was fined Rs. 30.

Re-examined: I remember the dates in Bhadro because in Posh I went to Chittagong. I have not seen at Court that Afsaruddin who holds land north of Islam. He is called Afsaruddin Bepari. This man Afsaruddin (here called) is the man. I did not notice him when I came to depose.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.
The 22nd January, 1901.

VII.—AFSARUDDIN.

The deposition of defence witness No. 7, aged about 65 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. P. Pennell, Sessions Judge of Noakhali, this 22nd day of January, 1901.

My name is Afsaruddin. My father's name is Nanu Bepari. I am by caste Mussulman. My home is at Mouzah Solla, Police Station Sudharam, Zilla Noakhali. I reside at present in Mouzah there, Police Station , Zilla , where I am cultivator.

I have land in Chur Pagla. Islam, who has given evidence, has land there. His land is south of mine. I returned from the Chur one Friday, but forget the date. I knew Ismail Jagirdar. I heard of his murder. I returned home before he was murdered. I went back to the Chur five or seven days after that.

The accused's pleader declined to examine the witness further.

Not cross-examined.

By the Court: The witness last examined is called Islam Manjhi. He is not called Ismail Manjhi or any other name.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.
The 22nd January, 1901.

VIII.—CHAND MIA.

The deposition of defence witness No. 8, aged about 30 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, A. Pennell, Sessions Judge of Noakhali, this 22nd day of January, 1901.

My name is Chand Mia. My father's name is Mahomed Ismail Bhuiya. I am by caste Mussulman. My home is at Mouzah Chur Uria, Police Station Sudharam Zilla Noakhali. I reside at present in Mouzah there, where I am *taluqdar*.

I have no land in Chur Pagla. I have cattle there. I went there in Bhadra or the 7th or 8th; it was after seven or eight days of the month had passed. On the 8th or 9th the Manjhis and other people (*ar o lok*) went with me. I returned after five or seven days. I know the witnesses Islam, son of Dari, and Rajab Ali. I saw them at the Chur and returned with them.

Cross-examined: I am not a tailor (Khalifa). I got a summons in this case Fazal Munshi gave it to me. There is no Chand Mir Khalifa in our quarter. I was called by that name when a boy. I do not know any other Chand Mir Khalifa of our village. I do not know any Chand Mir Khalifa of Chur Uria having a shop in the Amtoli quarter of this town. I live 10 or 15 kanis from the prosecution witness Islam We live in different villages (Mouzahs). I do not know Rajub Ali's father's name. I do not know the father's name of anyone else in Islam's village. I do not know tha

Islam's father's name is Dari. I went to Chur Pagla to herd my cattle to put them in charge of another. Of those who returned from the Chur with me, I only remember the names of Tuku Mir and of the prosecution witnesses Islam and Rajab Ali and of the defence witness Islam. I cannot give the boundaries of Islam's land. I know the prosecution witness Islam. I do not know the place of occurrence. I have never been imprisoned. I do not remember that I was ever fined.

By the Court: I remember the date because I paid the wages of the man I hired to herd my cattle. I paid that man not at the Chur, but in my village. I paid him in Bhadra. I don't remember whether I paid him before or after going to the Chur. I got no receipt for the money. It was his past wages which I paid, it was not an advance. It was after three or four days of Bhadra had passed that I paid him. I remember that date because we made a *hisab*. I paid him for Assar and Srabon and three or four days of Bhadra and also for the time it would take to go to that place and return up to the 12th or 14th Bhadra. That herdsman's name was Tuku Mir. Tuku Mir preceded me to the Chur, after getting his wages. He left his boy in charge—he always leaves his boy in charge. I did not put my cattle in charge of any other man when I went there. I brought them back to the main land. I went there to fetch them. I went instead of sending Tuku Mir, because he had not agreed to bring them back. I paid him before getting my cattle back, because he said he was in need of money.

The pleader for accused here intimated that he would not examine any further witnesses.

A. PENNELL,
Sessions Judge.

The 22nd January, 1901.

Explained to the witness in Bengali and admitted to be correct.

A. PENNELL,
Sessions Judge.

A. HAIDAR,
Sessions Clerk.

The 22nd January, 1901.

DEPOSITION OF DR. NOBIN CHUNDER DUT, CIVIL MEDICAL OFFICER, BEFORE THE COMMITTING MAGISTRATE.

Admitted under Section 509, Criminal Procedure Code.

A. PENNELL,
Sessions Judge.

The 15th January, 1901.

The deposition of Babu Nobin Chunder Dut, aged about — years, taken on solemn affirmation under the provisions of Act X of 1873, before me, K. S. Sen, Deputy Magistrate, this 21st day of November, 1900.

My name is Nobin Chunder Dut. I am Civil Medical Officer.

On 26th of August, 1900, I examined the body of a man identified to me as that of Ismail Jagirdar by Police Constable Ramdhon Barua and Idris Mian, son of the deceased. The body was fresh and fairly well nourished. There were several small abrasions of skin varying in size from $1\frac{1}{2}$ in. by $\frac{1}{8}$ in. to $\frac{1}{8}$ in. by $\frac{1}{8}$ in. on the left side side and front of the chest. Similar appearance was also found on the right side of the neck and top of right shoulder and also on the right side of the chest. One abrasion about $\frac{1}{2}$ in. by $\frac{1}{8}$ in. was found on the back of the fore-arm. Another abrasion about $\frac{1}{4}$ in. by $\frac{1}{8}$ in. on the back of the right knee. A third abrasion in front of the left knee, and a fourth on the penis. The top and right side of the head, the right half of the forehead and the right cheek were generally bruised. There was a bruise about 2 in. by 1 in. on the back to the left of the spine. The left upper eye-lid was denuded of skin. On dissecting the scalp and the skin of the face quantities of effused blood were found underneath, on the top of the head, on the forehead, on both temples, and on the right cheek, effused blood was also found near the skin in front and sides of the neck. The lower jaw bone was fractured. The internal organs were all healthy, except the right lung at the lower margin of which signs of old inflammations were found. The brain and membranes, the lungs, the liver and the kidneys were congested. I am of opinion that death in this case was caused by violence. The probability is that he was struck on the head by some hard blunt weapon or thrown down upon a hard surface and that his neck was also pressed. These are the violences to which death might have been due. Bruises might have been caused by some hard blunt weapon even a man's clenched fist. Abrasions might have been caused by friction against some rough hard surface. I examined the body at 4.30 p.m. on the 26th August.

Cross-examination: Nil.

Read over and admitted correct.

KALI S. SEN,
Deputy Magistrate.

The foregoing deposition was taken in the presence of the accused persons who had an opportunity of cross-examining the witness. The deposition was explained to the accused and attested by me in their presence.

KALI S. SEN,
Deputy Magistrate.

DEPOSITION OF MOHOBAT ALI, BEFORE THE COMMITTING MAGISTRATE.

Admitted in evidence under Section 33, Indian Evidence Act.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

The deposition of Mohobat Ali, aged about 23 years, taken on solemn affirmation under the provisions of Act X of 1873, before me, Babu K. S. Sen, Deputy Magistrate of Noakhali, this 19th day of October, 1900.

My name is Mohobat Ali. My father's name is Amjad. I am by caste Mahomedan. My home is at Mouzah Chur Uria, Police Station Sudharam, Zilla Noakhali. I reside at present in Mouzah Ditto, Police Station Ditto, Zilla Ditto, where I am cultivator.

On 9th or 10th Bhadra last one Sunday at noon I learnt that Ismail Jagirdar was killed. Early in the morning of that Sunday I met with Sadak Ali present in Court (identified) in the village road of Chur Uria. He was going towards south, his wife and a child on his lap. After repeated enquiries he said he was going to his son-in-law's house.

Read over and admitted correct.

KALI S. SEN,
Deputy Magistrate.

SESSIONS JUDGE'S MEMO. OF THE EXAMINATION OF THE ACCUSED PERSONS.

EXAMINATION OF THE ACCUSED PERSONS.

(Section 364 of the Code of Criminal Procedure.)

I.—SADAK ALI.

The examination of the accused No. 1, aged about 45 years, taken before me, A. Pennell, Sessions Judge of Noakhali, on the 19th day of January, 1901.

My name is Sadak Ali. My father's name is Asraf. I am by caste Mussulman, and by occupation cultivator. My home is at Mouzah Solla, Thana Sudharam, District Noakhali. I reside there.

Q.: Did you make this statement (Exhibit 28 here read over to him) before the Committing Magistrate?—*A.*: Yes.

Q.: And did you with the other accused file this written statement (Exhibit 29 here read over to the accused)?—*A.*: Yes.

Q.: Do you wish to say anything else?—*A.*: No.

Q.: Will you examine witnesses?—*A.*: Yes.

The above examination was taken in my presence and hearing, and contains a full and true account of the statement made by the accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

EXAMINATION OF ACCUSED PERSON.

(Section 364 of the Code of Criminal Procedure.)

II.—ASLAM.

The examination of accused No. 2, aged about 30 years, taken before me, A. Pennell, Sessions Judge of Noakhali, on the 19th day of January, 1901.

My name is Aslam. My father's name is Lukhi Goldar. I am by caste Mussulman, and by occupation cultivator. My home is at Mouzah Solla, Thana Sudharam, District Noakhali. I reside there.

Q.: Did you make this statement (Exhibit 30 here read over to him) before the Committing Magistrate?—*A.*: Yes.

Q.: And did you file this written statement, Exhibit 29 (again read over)?—*A.*: Yes.

Q.: Do you wish to say anything else?—*A.*: I am a very poor man. I have not even a hut to live in. Nanda Thakur, Nanda Basi and Sadak Ali have in collusion caused me to be accused. They have joined with Jasoda Babu and falsely set up this case. On the night of occurrence after coming from work I had a headache and fever. I could not go out and could not even have my dinner that night. Though I paid my rent all right they brought suits against me and I have been paying the amounts out of my small earnings as a labourer. In the cattle theft case I was cited as a witness for the defence but I did not give evidence and on that grudge they have falsely accused me.

Q.: Why should Nanda Thakur, Nanda Basi and Sadak Ali accuse you?—*A.*: They demanded money from me, but I said I was not guilty and would not pay them.

Q.: Will you examine witnesses?—*A.*: Yes.

The above examination was taken in my presence and hearing and contains a full and true account of the statement made by the accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

EXAMINATION OF ACCUSED PERSON.

(Section 364 of the Code of Criminal Procedure.)

III.—ANWAR ALI.

The examination of accused No. 3, aged about 25 years, taken before me, A. Pennell, Sessions Judge of Noakhali, on the 19th day of January, 1901.

My name is Anwar Ali. My father's name is Haidar Ali. I am by caste Mussalman, and by occupation cultivator. My home is at Mouzah Chur Uria, Thana Sudharam, District Noakhali. I reside there.

Q.: Did you make this statement (Exhibit 31 here read out) before the Committing Magistrate?—*A.*: Yes.

Q.: And did you also file in the Lower Court the written statement (Exhibit 29) which has been read over?—*A.*: Yes.

Q.: Do you wish to say anything else?—*A.*: No.

Q.: Will you call witnesses?—*A.*: Yes.

The above examination was taken in my presence and hearing, and it contains a full and true account of the statement made by the accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

EXAMINATION OF ACCUSED PERSON.

(Section 364 of the Code of Criminal Procedure.)

IV.—YAKUB ALI.

The examination of Yakub Ali accused No. 4, aged about 27 years, taken before me, A. Pennell, Sessions Judge of Noakhali, on the 19th day of January, 1901.

My name is Yakub Ali. My father's name is Choudhir Mir.

I am by caste Musalman and by occupation talukdar. My home is at Mouzah Choukria, Thana Sudharam, District Noakhali. I reside there.

Q.: Did you make this statement (Exhibit 32 here read over) before the Committing Magistrate?—*A.*: Yes.

Q.: And did you also file the written statement Exhibit 29 which has been twice read over?—*A.*: Yes.

Q.: Do you wish to say anything?—*A.*: No.

Q.: Will you call witnesses?—*A.*: Yes.

The above examination was taken in my presence and hearing, and contains a full and true account of the statement made by the accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

TRANSLATION of the EXAMINATION of the accused ANWAR ALI before the Sessions Judge.

The examination of the accused person, aged about 25 years, taken before me, A. P. Pennell, Sessions Judge, Noakhali, this 19th day of January, 1901.

My name is Anwar Ali (No. 3). My father's name is Hyder Ali. I am by caste Mussulman, and by occupation cultivator. My home is at Mouza Chur Urya, thanah Sudharam, district Noakhali.

Q.: (The statement Exhibit XXXI. made by the accused before the Lower Court was read over and the accused was asked). Have you made this statement?—*A.*: Yes. I made this statement.

Q.: (The written statement Exhibit XXIX. filed in the Lower Court was read and the accused was asked) Did you make this statement before the Deputy Babu?—*A.*: Yes. I have.

Q.: Do you want to say anything more?—*A.*: No. I won't say anything more.

Q.: Will you cite witnesses in your defence?—*A.*: Yes. I will.

ANWAR ALI (by mark)—Accused.

The above examination was taken in my presence and hearing, and it contains accurately the whole of the statement made by the accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

TRANSLATION of the EXAMINATION of the accused ASLAM before the Sessions Judge.

The examination of the accused person, aged about 30 or 32 years, taken before the Sessions Judge of Noakhali, this 19th day of January, 1901.

My name is Aslam (No. 2). My father's name is Laksmi Goladar. I am by caste Mussulman, and by occupation cultivator. My home is Salia, Thana Sudharam, District Noakhali.

Q.: (The statement, Exhibit XXX., made before the Lower Court was read and the accused was asked) Did you make this statement?—*A.*: Yes. I have made the statement.

Q.: (The written statement, Exhibit XXIX., filed in the Lower Court was read and the accused was asked) Did you file this statement?—*A.*: Yes. I filed this written statement.

Q.: Do you want to add anything?—*A.*: I am extremely poor. I have no house to live in. I earn my livelihood by working as a labourer. Sadak Ali, Nanda Bashi and Nanda Thakur have, out of malice, falsely implicated me in this case. They have brought this false charge in collusion with Jashoda Baboo. On the night of occurrence, after returning from work I remained at home, suffering from headache. I did not take anything that night. A false rent case was brought against me. I have paid the said rent with great difficulty. I have been accused in this case and the rent case was brought against me, simply because I did not give my evidence for the defence in a case of cattle-lifting.

Q.: Why did Nanda Bashi, Nanda Thakur and Sadak Ali accuse you in the case?—*A.*: They accused me because I failed to pay them money.

Q.: Will you call witnesses in your defence?—*A.*: Yes. I will cite witnesses in my defence.

ASLAM.—Accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

The above examination was taken in my presence and hearing and it contains a full and true account of the statement made by the accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

TRANSLATION of the EXAMINATION of the accused SADAK ALI before the Sessions Judge.

The examination of the accused, aged about 45 years, taken before me, A. P. Pennell, Sessions Judge at Noakhali, this 19th day of January, 1901.

My name is Sadak Ali (No. 1). My father's name is Asrap. I am a Mussulman by caste, and a husbandman by profession. My home is at Mouza Salia, Thana Sudharam, district Noakhali.

Q.: (The statement made before the Lower Court being read over, the accused was asked) Did you make this statement? It is marked as (Exhibit XXVII.).—*A.*: Yes. I made this statement.

Q.: (The written statement (Exhibit XXIX.) filed in the Lower Court was read and the accused was asked) Did you file this written statement?—*A.*: Yes. I have filed this written statement.

Q.: Do you want to add anything?—*A.*: No. I do not want to say anything more.

Q.: Will you call witnesses in your defence?—*A.*: Yes. I will.

SADAK ALI.—Accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

The above examination was taken in my presence and hearing, and it contains a full and true account of the statement made by the accused.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

TRANSLATION of the EXAMINATION of the accused YAKUB ALI before the Sessions Judge.

The examination of the accused, aged about 25 or 30 years, taken before me, A. P. Pennell, Sessions Judge of Noakhali, on the 19th day of January, 1901.

My name is Yakub Ali (No. 4). My father's name is Chaudhuri Miyah. I am a Mussulman by caste and talukdar by profession. My home is at Chur Urya, thanah Sudharam, District Noakhali.

Q.: (The statement, Exhibit XXXII., made before the Lower Court was read over, and the accused was then asked) Did you make this statement?—*A.*: Yes. I made this statement.

Q.: (The written statement, Exhibit XXIX., filed in the Lower Court was read over, and the accused was then asked) Did you file this statement before the Deputy Babu?—*A.*: Yes. I filed this statement.

Q.: Do you want to say anything more?—*A.*: No. I have nothing more to say.

Q.: Will you call witnesses in your defence?—*A.*: Yes. I will cite witnesses in my defence.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

YAKUB ALI.—No. 1 accused.

The above examination was made, etc.

A. PENNELL,
Sessions Judge.

The 19th January, 1901.

OPINION OF ASSESSORS.

Babu Ishan Chundra Sen.—In our opinion Sadak Ali, Anwar Ali and Aslam are guilty, and as to Yakub Ali we doubt if he had any share in the murder.

Babu Chundra Mohun Ray.—My opinion is the same. I think the three Sadak Ali and the two others are guilty, but not Yakub Ali.

A. PENNELL,
Sessions Judge.

The 25th January, 1901.

IN THE COURT OF THE SESSIONS JUDGE OF NOAKHALI.

EMPRESS *versus*.

1. SADAK ALI.
2. ASLAM.
3. ANWAR ALI.
4. YAKUB ALI.

SESSIONS TRIAL NO. I. OF 1901.

Judgment.

The four accused have been committed for trial on a charge of committing murder by causing the death of one Ismail Jagirdar.

The assessors, of whom one is the Head Master of the Government Zilla School, and the other a zemindar from the interior, are of opinion that Sadak Ali, Aslam, and Anwar Ali are guilty, and that Yakub Ali should be given the benefit of the doubt. I may state that after the arguments were over the assessors asked leave to retire and consult, and on their return after a few minutes Babu Ishan Chundra Sen (the Head Master) gave what is stated to be their joint opinion. Babu Chundra Mohun Rai when asked by me said that his opinion was the same, but as the Head Master has spoken in English, and this latter Assessor is unacquainted or but slightly acquainted with that language, I asked him to state his opinion in Bengali which he (Babu Chundra Mohun Rai) accordingly did. The opinions of both Assessors were then translated into Bengali and read out by the Court Interpreter.

The case is one of unusual importance. The actual hearing has occupied sixteen working days, in addition to a view of the place of occurrence which took four hours and the writing of the judgment has taken as much. The direct issue—the conviction or acquittal of four men on a capital charge—is of itself grave enough; but it might almost be called insignificant in comparison with certain other issues indirectly involved, which concern the lives and liberties of every one of the inhabitants of this District, perhaps of these provinces generally.

The deceased, Ismail Jagirdar, a man of 60 years of age, was a peon of the Bhulua estate (a large zemindari in this District, now managed by the Administrator-General), under which he held a *jagir* (whence no doubt his title of Jagirdar). He lived in a hamlet of 14 or 15 houses included in the village (which in this District means a collection of hamlets scattered, it may be, over several miles) of Chur Uria, some 3 or 3½ miles from this town. The other houses in this hamlet belonged to him; but though the occupants were his tenants, it is in evidence that he was on bad terms with all of them, and that with some at least of them he had had litigation of a protracted kind. It is possible that like many other small landlords, he was of a grasping disposition: it is at all events certain that he and his ryots were always having cases against each other, and that the litigation was not confined to the Civil Courts.

At 8 or 9 a.m., on the 9th Bhadro last, corresponding to the 25th August, 1900, Ismail Jagirdar started from his house at Chur Uria to attend Court at Sudharam (the headquarters of this District), where he had to give evidence in a rental case which his wife had brought against two of the ryots, Abdul Kurim and Kurim Buksh, and in which he was a witness. Kali Kumar Das, the Pleader whom Ismail employed to conduct his cases, deposes that Ismail came to his lodging at 9 or 10 a.m., and that he gave his evidence the same day in Court, where his deposition was finished at 5 or

5.30 p.m. Just after sunset (which at that time of year would be about 6.30 p.m.) he was seen by the witnesses Abdul Mir and Ahamudullah. He was going towards his house from the direction of the town. Ahamudullah, who was accompanied by a constable named Abdul Aziz (who has not been examined) was also returning home from the town. The place where they overtook or came across Ismail was the *daraja* of one Asad Mullah.

The word daraja, which corresponds to the Hindustani *darwaja*, has acquired in this district a peculiar local meaning. In the rains practically the whole of this district, except such portions as have been artificially raised, is under water. The only dry land is the *baris*, the Government and village roads, and the raised paths often of considerable length which connect the *baris* with these latter. It is these paths, which are called *darajas*, the word might perhaps be rendered "pathway" leading from the road to the "*cutchary ghor*" or office room, or in those *baris* which have no outer apartments to the entrance of the *uthan* or yard. These pathways, of which each *bari* has one, are as a rule artificially raised; but this is not necessarily the case; the *daraja* of Ismail Jagirdar's *bari*, to give a concrete instance, has for some distance been cut between high banks, so that it is actually below the level of the ground on each side of it.

I have seen the *daraja* of Asad Mullah's bari; it is a raised pathway leading through paddy fields. The place where the witnesses met Ismail is the point where this *daraja* joins the public road. At the time it was raining hard; and Abdul Mir, who lives in the *bari* to which the *daraja* leads, asked the three wayfarers to come in and stop there. They, however, declined his offer and proceeded on their way till they came to a large tank known as the Kalabhanga *dighi*, distant a mile or a mile and a half from Ismail Jagirdar's house. There their roads parted. Ahamadullah and the constable went along the north bank of the tank towards the west, while Ismail Jagirdar took the road by the east bank of the tank which leads southwards towards his home. He was never after seen alive by any of the witnesses for the prosecution.

Ismail Jagirdar had a wife and a son Idris Mir. The latter, a singularly intelligent lad of 17 or 18, is the first witness for the prosecution. This lad is the only adult male relative the deceased had for some miles round and this fact may serve to explain the conduct hereafter to be described, of the investigating Police officer and his superiors. They could hardly have foreseen that this boy would display as he has displayed an intelligence and resourcefulness rare among those of much maturer years and of far higher worldly position.

Idris has deposed that he made no search or enquiry for his father on the latter's failing to return home as he supposed that his father had stayed the night with someone. Early next morning, however, on going to the large tank in front of their house (which tank belongs to the deceased) to wash his hands and face, he saw his father's dead body floating face downwards close to the *ghat*. The boy burst into tears and Naimuddin Miji, Abdul Aziz, Islam and many other neighbours came to the place, shortly followed by Osman Ali Chowkidar, the village ward-man. Of these men Naimuddin Miji, who lives next door to deceased on the south-west and Osman Ali Chowkidar are both accused in the case, but are not now before the Court. Idris wanted to take his father's body out of the tank—he says he was going down into the water to look at it when Osman Ali Chowkidar told him not to take it up till the Daroga came—but to go to the thana and lodge information. Taking into account the youth of the lad, the official position of his adviser, and the apparent good faith of the advice —for although Idris says that he suspected even then that his father had been murdered, there was no reason why he should have suspected Osman Ali Chowkidar in particular and as no mark of violence was visible in the then position of the body his suspicion of foul play might well seem even to himself unwarranted—it is small wonder that he yielded to the advice.

Idris accordingly left the corpse as he had found it and started for the thana. Naimuddin Miji, Emdadullah, Yakub Ali and Osman Ali Chowkidar accompanied him. Of these men the first three are accused in this case although only Yakub Ali is now before the Court. Apart from the evidence directly incriminating them which will be discussed hereafter it is certainly somewhat surprising that they should take such interest in informing the Police of Ismail Jagirdar's death for they were each and all of them on bad terms with the deceased and against Yakub Ali in special he had had much litigation both civil and criminal. No explanation of this remarkable conduct of the deceased's enemies consistent with their innocence has been attempted and unexplained it is certainly a very suspicious circumstance, except, perhaps, so far as Osman Ali Chowkidar is concerned.

On the way to the town, says Idris, three of these men, namely, Osman Ali Chowkidar, Emdadullah and Yakub Ali told him to say at the thana that his father was dead, but that he made no charge against anyone. When they got to the town, they asked him if he was going to lodge information as they suggested and on his returning an undecided answer Yakub Ali and Osman Ali Chowkidar advised him if he had any doubt to consult a mukhtear. The lad's father had a regular pleader. The witness Kali Kumar Das and the lad has deposed in cross-examination that he himself was personally acquainted with Jashoda Babu one of the leading mukhtears here (who subsequently acted as his mukhtear in this case) with another mukhtear known as "Guhaja" and possibly with others whom he did not know "well" as he did these

two. Instead of going to any of these he went to the lodging of a mukhtar named Ashraf Ali whom he had never seen before. His explanation which under the circumstances I find no difficulty in crediting is that the four men took him there. Idris and his companions got to the muktear's at 7 or 8 a.m. On the way to the mukhtear's lodging (which is out of the direct route to the thana) Idris says that they met the accused Sadak Ali. No explanation has been offered of what Sadak Ali (of whose movements more hereafter) was doing in that quarter at the time. It is a plausible hypothesis although only a hypothesis that he had gone on ahead to prepare the mukhtar for Idris's visit.

Ashraf Ali says Idris advised him to lodge information as he had seen. The advice is on the face of it and must have appeared to Idris straightforward enough only as has been stated above, the interference of Osman Ali Chowkidar had secured that up to that time he should not see anything which might indicate the real manner of his father's death.

From the mukhtar's Idris still accompanied by the four men went to the thana and lodged the information marked as Exhibit I. which was recorded by the officer in charge of the Police Station a Sub-Inspector (Daroga) named Osman Ali. In this first information Idris stated his father's departure from home, the clothes he was then wearing, his failure to return, and the discovery of his body in the tank that morning and without saying whether or not he suspected anyone or anything, stated that he could not say how his father got into the water or how he died.

After lodging this information Idris returned home accompanied by his cousin Aliullah who lives on the race course here and had come to the thana in consequence probably of hearing something. After he came out of the thana Idris's self-constituted friends left him. None of them was to be found for some days after and although only Yakub Ali among them has been sent up for trial, it is to be noted that there is direct evidence incriminating Naimuddin Miji and Emdad Ullah also and indirect evidence that Osman Ali Chowkidar was absent from his home where he would naturally be at that time about the cultivator's dinner hour when the murder was being committed.

Shortly after he arrived home Idris met a constable and then two constables. He is not sure nor does it much matter whether he or they got to his house first. After the constables had both come the body of deceased was taken out of the tank in Idris' presence. Idris then saw, he says, that the skin on the throat had disappeared, the forehead was swollen and discoloured, the skin just behind the ears abraded and reddish, one eye gouged out and there was a red mark like blood on the penis. Idris says that there were other marks of violence also, but that he did not notice them particularly, as he felt faint and began crying.

A Head Constable named Kisto Chundra Bhadra, attached to the Sudharam thana, has been examined as a witness for the defence. He has perjured himself so grossly on other points that it is hardly safe to place much reliance on what he says. Still he may perhaps be believed when he states that he despatched the dead body to the hospital at Noakhali. Ramdhon Barua, Police Constable, deposes that he was sent in charge of the body by this Head Constable, that he took it to the hospital and made it over to the Doctor there in the same state in which he received it. Idris says that he also accompanied the body. The way to the hospital passes by the thana and Idris says that he went there with the body, in route to the hospital and saw the Daroga Osman Ali. Idris says that he and the Constable got to the hospital at 2 or 3 p.m. and that a *ghari* or two (24 or 48 minutes) after the Doctor examined the body, which he identified as his father's.

The deposition of Babu Nobin Chundra Dutt, the Civil Medical Officer of this District, recorded by the Committing Magistrate, has been admitted in evidence under Section 509 of the Criminal Procedure Code. The Doctor says that he examined the body at 4.30 p.m. on the 26th August. It was identified to him as that of Ismail Jagirdar by Police Constable Ramdhon Barua and Idris Mir, the deceased man's son. The body was fresh. There were several small abrasions of the skin on the left side and front of the chest on the right side of the neck and top of the right shoulder and also on the right side of the chest. There were other abrasions on the back of the forearm, on the back of the right knee, on the left knee and on the penis. The top and right side of the head, the right half of the forehead, and the right cheek were generally bruised, and there was a large bruise on the back to the left of the spine. The left upper eye lid was denuded of skin. On dissecting the scalp and the skin of the face the Doctor says he found quantities of effused blood underneath, on the top of the head, on the forehead, on both temples and on the right cheek, and also near the skin in front and on the sides of the neck. The lower jawbone was fractured. The brain and membranes, the lungs, the liver and the kidneys were congested.

The Doctor says that he is of opinion that death was due to violence. The probability is, he thinks, that deceased was struck on the head by some hard blunt weapon or thrown down upon a hard surface and that his neck was also pressed. These are the violences to which death might have been due. The bruises might have been caused by some hard blunt weapon or even by a man's clenched fist, and the abrasions by friction against some rough hard surface.

In addition to this evidence it may be mentioned that when Ismail Jagirdar left for Sudharam on the morning of the 9th Bhadro he had on a black bordered *dhoti*, a

white coat, and a sheet, was wearing a hat, carried an umbrella, and had some papers in his pocket. This we get from the evidence of Idris. Abdul Mir, who, as already stated, saw deceased shortly after sunset, says that he then had a coat, sheet and shirt (*dhoti*) that he was carrying an umbrella, and that he had a piece of new cloth (presumably bought in the town) under his arm. Ahmadullah, who was the last of the witnesses to see Ismail alive, did not notice his coat, but says he had a shirt on, was carrying an umbrella and had a bundle under his arm.

When Ismail's dead body was found floating in the tank, he had on only a *dhoti* (shirt), the same black-bordered *dhoti* says Idris, which he was wearing when he left home. The tank has been searched, but none of the other articles, which deceased had with him when he parted from Ahmadullah at the Kalabhanga *dighi* have ever been recovered.

The disappearance of these articles and the medical evidence prove conclusively enough that Ismail's death was due to foul play. Nor is there any reason for thinking or suspecting that the offence committed by the person or persons who caused his death was anything less than murder. It seems reasonably certain even from this evidence that the act or acts by which death was caused were done with the intention of causing death: in fact that Ismail was deliberately murdered. And there is much other evidence which supports this view. It has not indeed been contended on behalf of the accused that the offence committed was anything short of murder. All that their pleader has attempted to show is that they have not been conclusively proved to be the murderers.

Idris says that it was dark 6 or 7 p.m. when he got out of the hospital. The bullock cart in which the body had been brought was waiting outside. Idris sent the body home in this cart in charge of Keramat Ali, a connection of his, who had come with him to the hospital and went himself to the thana, which I may say is a few hundred yards from the hospital. He says he had to wait there two or three hours, as the Daroga had not come and that he heard the Collectorate clock strike either 10 or 11. Finally he lodged a second information Exhibit 2. He at first stated that he does not remember who recorded it, but afterwards said it was a Daroga. This is not conclusive that it was Sub-Inspector Osman Ali by whom (Exhibit 2) purports to have been recorded, for there are more than one Sub-Inspectors (Darogas) at the Sudharam Thana, Osman Ali being the Sub-Inspector in charge. Exhibit 2 bears Idris's signature and he admits that it is correctly recorded. Who recorded it, therefore, may not be otherwise important; but it should be noted that the time at which it purports to have been recorded (which is different from that stated by the witness) is not in evidence, inasmuch as Sub-Inspector Osman Ali, by whom it purports to have been recorded has not been examined.

In this second information Idris stated the facts above described. He mentioned the visit to Ashraf Ali Mukhtear's and said that on his way there he met Sadak Ali who was coming from the direction of the Mukhtear's house. He did not mention all four of the men who accompanied him to the thana; but he said that Emdadullah and Abdul Halim told him to lodge a *nadabi izahar* (*i.e.*, to say that he suspected no one).

Abdul Halim is not one of the four men whom Idris names now. He was sent by the police with the four men now on their trial, but was discharged by the Committing Magistrate for want of evidence. It is noteworthy that then, when Abdul Halim was on his trial, Idris told the same story as now, leaving out Abdul Halim and naming three other men of whom one only, Yakub Ali, was then before the Court. It should also be remarked that in Exhibit 2 Idris is not recorded to have mentioned that he was accompanied by Osman Ali Chowkidar whom he had named in Exhibit 1 and who was certainly with him when he first came to the thana, so it is not perhaps strange that Naimuddin and Yakub Ali were also left out. It should always be borne in mind that even though Idris may have acknowledged in general terms the correctness of the second information (Exhibit 2), the person, who purports to have recorded it has not been examined, and probably if he had been examined, would not have been believed. It is perhaps, however, sufficient to point out that under the law (Section 145 of the Indian Evidence Act) if it is intended to contradict a witness by previous statements of his reduced to writing, it is necessary that his attention should be called to those parts of it which are to be used for the purpose of contradicting him—that Idris was not even cross-examined with reference to this second information, and that the pleader who conducted the defence is the leader of the local Bar.

Before mentioning the facts in connection with the visit to the Mukhtear's Idris stated that he suspected his father had been murdered and that his father had enmity with Sadak Ali, Aslam, Emdadullah, Anoar Ali, Abdul Halim, Osman Ali Chowkidar, Fazar Ali, Abdul Hakim and Abdul Karim: that he suspected that these or some other enemies of his father's had put his father to death.

When Exhibit 2 was read over to him the witness volunteered that the Daroga told him to name a few (literally two or four) of the persons with whom his father had enmity. In cross-examination he stated also that he lodged this second information at the instance of the Daroga Osman Ali who told him to do so when the body was taken to the thana en route to the hospital, although it is indeed tolerably certain as the witness added, that he would have given *ijahar* even if the Daroga had not told him to do so.

It has been urged by the defence that these circumstances indicate good faith on the part of Osman Ali the Daroga and the negative theory advanced by the prosecution that he has been trying to hush up the case to screen his relatives, the accused in the dock. But it is not the case even of the prosecution that Osman Ali knew at this time that his relatives were implicated. They are not near relatives, they are very much his inferior in social position, it was not a connection to be proud of and there is nothing to show that Osman Ali had tried to keep it up. It was not to be expected that these poor relations would go and tell the great man of the family the all-powerful Sub-Inspector that they had committed a murder and wanted him to help them out of it. It was natural enough that Osman Ali should tell Idris to report that his father had been murdered: in any view of the case, it would have been impossible for him after the medical examination to prevent that fact leaking out, and moreover he had no motive to do so. It is, however, suggested that he would at least have suppressed the names of his relatives when recording Exhibit 2, and it is pointed out that Idris admits that he knew from the first all along, that the four accused now on their trial of whom three are mentioned in Exhibit 2 were Osman Ali's relatives.

Two explanations suggest themselves. One is that Osman Ali did know at the time that the men whose names he took down were his relatives, but that he did not think of burking the case till next morning when he met Amjad Mir through whom he is related to the accused.

The second and perhaps the more plausible explanation is that Osman Ali Daroga who had probably just been dining and may not have been at his best—I am drowsy enough myself at 10 or 12 p.m.—really did not know or at all events notice that the men implicated were his relatives. And in this connection it may be noted that all three of them have very common names, and that the father's name of Sadak Ali the one Osman Ali was most likely to know, was not given. The men are all distant connections of Osman Ali and it is very doubtful whether the fact even of their existence was present to his mind when he took down that information.

More men know Osman Ali Daroga than Osman Ali Daroga knows. I believe I could substantiate my claim to be at least as near a *bhai* of Lord Halsbury as any of these accused is of Osman Ali, but I think it at least doubtful whether some months back when a certain noble lord got up in the House of Lords, proposed Mr. Bourdillon's compulsory retirement and made sundry complimentary references to myself it ever crossed the mind of the President of that august assemblage that the Judge who had made so big a splash in the far away Indian puddle was a relative of his.

After lodging this second information Idris returned home. Next morning (Monday, the 27th August) at 7 or 8 a.m., the Daroga Osman Ali came to his house. Osman Ali remained in the village for 12 or 14 days. For the first five or seven days he put up at Idris' house, he afterwards removed to the house (which is next to Idris') of Naimuddin Miji who as already stated is one of the persons said to be implicated in the murder.

On the morning of Tuesday, 28th August, the District Superintendent of Police, a European named W. Y. Reily, 38 years of age, whom the Civil List shows to be drawing Rs. 600 per month (I give his initials to distinguish him from another District Superintendent of Police of the same name) came out to the place to test the enquiry he says. For reasons which will be fully set forth hereafter, I am compelled to say at the outset that very little reliance can be placed upon Mr. Reily's statements. He says that he got to Idris' house "about" 8 a.m. and that he left it for Noakhali "about" 10.30 a.m. He has, however, to admit that in the interval all he did was to "examine" complainant and his mother, and to "speak to" the village Chowkidar, and as all this would not take him anything like two hours and a half, it is to be presumed that his stay at Idris' house was considerably shorter. As will be seen hereafter the time at which Mr. Reily left Ismail Jagirdar's house is of very considerable importance.

On the 27th August, says Mr. Reily, he passed on Exhibit 25 A, the Court Sub-Inspector's copy of the (Second) First Information Report, the order "Inspector A. Please supervise enquiry." The Inspector of the A Division, Bharat Chandra Mojumdar has been examined as a witness for the defence. He says he is 55 years of age, and the Civil List shows that he is a senior second grade Inspector in receipt of Rs. 200 per mensem.

Bharat Chandra Mozumdar's proceedings are noticed hereafter.

Osman Ali the investigating Police Officer did not arrest or *chalan* anyone, although the accused who, according to Idris were originally absconding began to make their way back after the first six or seven days. On the 6th September Idris filed before Mr. J. A. Ezechiel, C. S., who for seven months last year officiated for Mr. Cargill as District Magistrate, the petition marked as Exhibit 3.

That petition runs as follows:—

> In the Court of the District Magistrate, Noakhali.
>
> The humble petition of Idris Mir, son of late Ismail Jagirdar, of Chur Uria, Station Sudharam,
>
> MOST RESPECTFULLY SHEWETH:—
>
> 1. That on the 9th Bhadra (25th August) the father of the petitioner came to town to conduct a case in the Civil Court, and that he did not return home that night.

2. That early in the following morning (26th August) the dead body of the father was seen floating in a tank in the petitioner's *ghata*. That thereupon the petitioner came to town and informed the Police about it.

3. That on medical examination it was found that the death of the petitioner's father was due to severe beating.

4. That the petitioner and his mother suspected their enemies and named them before the Police; and that during the Police investigation it has been disclosed by some persons that the said suspected enemies actually caused the death of the father.

5. That in spite of the evidence before the Police, the Police is silent up to date. That the Sub-Inspector Osman Ali being a local man, most of the accused persons are directly or indirectly related to the said investigating Sub-Inspector and his son's father-in-law Amjad Mia. And that during the investigation the said Amjad Mia was all along with the Sub-Inspector.

That the Inspector of Police sometimes went to the village at the time of the investigation, but the purpose and effect of his going there was best known to him.

That considering all these facts the petitioner is inclined to believe that no proper care was or will be taken by the Police to bring the culprits to justice.

6. That there are direct and circumstantial evidence to bring home the charge against the accused.

7. That the place of occurrence is near this town, and that the humble prayer of the petitioner is that Your Worship will be pleased to take up the case from the hand of the Police and take down the evidence by Your Worship's self or order due enquiry by a competent Court.

Noakhali,

The 5th September, 1900.

This petition was drafted by Joshoda Babu, the Mukhtear already referred to. This Joshoda Babu was cited as a witness by the defence but has not been examined.

Idris has admitted in cross-examination that he knew, when he filed this petition, the names of the eye witnesses to his father's murder, and the defence have laid much stress upon the fact that he did not give those names but only alluded to the witnesses in general terms as "some persons."

Now, if Idris or rather Joshoda Babu could have felt any confidence that Mr. Ezechiel would take up the case himself as Idris prayed, still more if they could have felt any confidence that he would do so at once, there might be a good deal of force in this contention.

But a Mukhtear and for that matter a Judge has to deal with men not as they should be, but as they are. As a European Advocate once told me "We have to study all your ways and know how to humour your fancies. Our living depends upon it." Add to this that Mr. Ezechiel had been several months in the District. If Joshoda Babu could not by that time form a pretty good idea of what Mr. Ezechiel was likely to do on Exhibit 3, he would hardly have maintained his place as a leading Mukhtear long.

In these remarks I am far from wishing to reflect adversely upon Mr. Ezechiel. It is no doubt much to be regretted—I think Mr. Ezechiel would admit that himself—that he did not at once "take up the case from the hand of the Police and take down the evidence himself." But very few District Magistrates, even senior officers, would have done such a thing. And Mr. Ezechiel is a comparatively junior officer who has had to revert to Joint Magistrate. By his subsequent conduct he fully redeemed his initial errors and the case as a whole does him great credit. He is the only Government official who has come out of it with clean hands. As reported cases abundantly prove, the course usually adopted by a District Magistrate, when he receives a complaint against the Police, is to refer that complaint for investigation to the immediate departmental superior of the office complained of, sometimes to the officer complained of himself. And this procedure is not by any means confined to District Magistrates or to complaints against police officers—there seems to be something in it congenial to the official mind. In a club in Calcutta to which I belong and to which members of the services do most resort, a complaint which I made on behalf of a respectable native visitor has just been similarly treated.

The order which Mr. Ezechiel passed on Exhibit 3 was:—

"To District Superintendent of Police for report. His attention is drawn to paragraph 5.

J. A. E.

The 6th September, 1900."

Mr. Ezechiel afterwards wrote "Early" above report. Perhaps it was well that he did so. For as will be seen hereafter the Police in general and Mr. Reily in particular were not slow to take any opportunity of delaying the disposal of the case.

Mr. Reily received the petition with this order on the 6th September and returned it to the District Magistrate the same day with marginal notes, which need not here be cited *in extenso*. He stigmatised the statements in the petition as "all nonsense" and backed up this sweeping denunciation by a number of assertions on matters of fact, nearly all of which were false in fact and some of which can hardly have been made without intent to deceive. He concluded by suggesting that "the complainant may be directed to produce his witnesses before me whom he thinks will prove the case." (The complainant it will be remembered had asked the Magistrate to take the case out of the hands of the Police.) On the 7th September Mr. Ezechiel passed on the petition the following marginal order:—

"The petitioner may produce his witnesses before the District Superintendent of Police.

J. A. E.

The 7th September, 1900."

Mr. Reily at first said he did not remember even having got Exhibit 3 back again. When confronted with this order, however, he admitted that he had seen it with that order on it in his office. But he cannot be positive that he got it on the 7th September. It might be a day or two after. There is one thing, however, which Mr. Reily admits that he got on the 7th September itself, though his memory does not enable him to say whether he got it before or after he got back Exhibit 3.

It is the slip marked as exhibit Y 40 and strangely enough has been filed quite out of its place in the papers which Mr. Reily handed to me.

It is an order from the District Magistrate written in blue pencil evidently an office note and is superscribed in the District Magistrate's hand in red pencil "*Urgent.*" It runs as follows:—

D. S. P.—

Please send me the papers of the Chur Uria Murder Case.

J. A. E.

The 7th September, 1900.

Below it is an order in red ink by Mr. Reily—

"Office Send.

W. R.

The 7th September, 1900."

Now although Mr. Reily's memory is singularly deficient on the point, it is perhaps a reasonable inference from the phrase "Chur Uria Murder Case" that the two men had talked the case over and it is probable if that be so, that Mr. Ezechiel was not satisfied with what Mr. Reily told him and sent for the papers of the case in consequence.

It is at all events very remarkable that Mr. Reily should not be able to remember whether he got that slip, and sent those papers before or after Mr. Ezechiel ordered him to examine the witnesses himself. In a district like Noakhali we cannot often get slips from the District Magistrate marked *urgent* and calling for the papers in murder cases the Police investigation of which has been challenged.

If the District Magistrate expressed dissatisfaction with Mr. Reily at this stage as is probable enough, Mr. Reily has a very obvious motive for concealing it, for such expressions of dissatisfaction would make any subsequent derelictions on his part the less excusable.

At all events whether before or after Mr. Ezechiel called for the papers, Mr. Reily received from him the complainant's petition with Mr. Ezechiel's order that he should himself examine the witnesses. Mr. Reily says that on the day he got that petition back, whatever that day may have been, he told the complainant to produce his witnesses. Idris, however, does not remember this; and it is more probable that the Magistrate's order would have been communicated by the Magistrate's Office to complainant's mukhtear and by the latter to complainant.

Idris at all events knew of the order and on the morning of the 9th September two days after it was passed—it does not appear that Mr. Reily did anything in the interval—he presented himself before the District Superintendent of Police.

The defence have harped much upon the fact that Idris never complained against Osman Ali to the Inspector or to the District Superintendent. To my mind the fact of his going to the Magistrate direct shows pretty clearly that he or his mukhtear did not trust either of them, and as the event proved, their distrust was fully justified. It was, however, natural enough—for after all we are here, because on the average and man for man we are better than our native fellow subjects. These things have a way of working themselves out—that he should distrust the white Policeman rather less than the black ones. And it is a significant fact that Idris on the 9th went not to Mr. Reily's office but to Mr. Reily's house.

If, however, he thought he would gain much by going there it was not long before he was undeceived.

Mr. Reily at first said that Idris stated his inability to produce or give a list of his witnesses. This was before he had handed in his special diaries. Directly he looked through these diaries, he said "I wish to correct my statement. It was at the circuit house not in office that complainant stated his inability to produce his witnesses."

Now the witness had never said that the complainant came to him in office. It is perhaps a not unreasonable inference that the witness had meant to say it, till he saw from his diary (Exhibit B) that it would be no use. Mr. Reily can hardly have *forgotten* whether the boy came to him at his house or in office.

It will also be seen that Mr. Reily pretended before he was confronted with his diaries that the boy could not name his witnesses. In the statement which he recorded under Section 161 (Ex.B 2) he has, however, recorded particulars of four witnesses and written that the boy offered to give a list of others. The boy himself states that he gave the names, etc., of some possibly of the four recorded by the District Superintendent of Police, and that the latter then ordered him to give a list of the others. And the truth probably is that Idris would have given the names of a good many other witnesses, but that Mr. Reily was too lazy to take them down.

At all events Mr. Reily admits that the lad who on the 9th had been unable to name his witnesses gave in on the 10th a list which bears his own initials and that date, containing the names and addresses of 31 of them. This list is Exhibit B 4.

The course which Mr. Reily took on receiving this list may have been sanctioned by the usage of the Bengal Police Department but has little else to recommend it. He ordered his office—the Police Office—to issue summonses to the witnesses named *through the Sudder Station* of which Osman Ali was in charge. And these summonses (Exhibit Y 30) were accordingly issued through this very Osman Ali whom the complainant had charged with hushing up the case. The witnesses Abdul Aziz (son of Samaradin) and Rajab Ali depose that the very day they had to attend the District Superintendent of Police. Osman Ali told them not to tell the latter anything and Rajab Ali says that Osman Ali actually told him this as he handed him the notice to appear before the District Superintendent of Police. Abdul Aziz gives the names of three other persons who were present when Osman Ali told him and Rajab Ali not to give evidence. Islam one of the eye-witnesses to the murder has deposed that long before this in fact on the Thursday after the occurrence Osman Ali had threatened him for hanging round Ismail Jagirdar's house saying that he had given his evidence, and that if he did not make himself scarce he (the daroga) would run a bamboo up his anus.

I have already remarked that it was a curious procedure of Mr. Reily's to summon the witnesses through Osman Ali. But this is as nothing to his conduct with regard to his special diaries.

The first of these special diaries is Exhibit B 1, dated the 9th September. Annexed to it is Exhibit B 2, the statement of Idris recorded under Section 161, Criminal Procedure Code. What Mr. Reily did with this special diary and with all subsequent special diaries was to send them to his own office.

So far as he recollects Mr. Reily says he did not submit them to the Magistrate. He is not aware of any rule that they should be submitted to the Magistrate but he thinks they ought to have gone. His object in writing these diaries was to show the work he had done each day. His wish says Mr. Reily was to inform the District Magistrate but he admits that he took no measures to give effect to that wish.

He knew when investigating the case that serious charges had been made against his Subordinate Police, but it never struck him, he says, that the natural result of his sending his special diaries to his office would be to inform not the District Magistrate but Osman Ali of what he was doing in the case and what the witnesses said, he never thought of that at all.

To understand the true "inwardness" of this evidence it is necessary that I should refer to the record of another criminal case that of Empress *versus* Mohesh Chandra Guha and Kummadini Kanta Guha which has already been before the High Court, and which has been going on for 18 months or more. It is a case in which Currency Notes to the value of Rs. 5,800 were stolen and in which the defence is that Osman Ali who investigated the case detected thieves but confined himself to taking the booty from them—that he passed off the notes or some of them through Kailas Chandra Deb, the Head Clerk of the Police Office, who carries on a trading business in the town in partnership with Kummadini Kanta Guha, and that some of the notes having been traced through the Currency Office to that shop, Osman Ali and Kailas have combined to make Kummadini and his father Mohesh the scapegoats.

Mr. Reily admits that he was cross-examined in that case at very great length by Mr. C. R. Das, a barrister of Calcutta, for two to three days he believes. He admits that the tendency of Mr. Das's questions was to show that he was completely in the hands of his Head Clerk Kailas. He admits that he knew the nature of the defence, but it never led him to make any enquiry as to the terms on which Kailas and Osman Ali were, and he cannot say even now whether they are on good terms or bad terms. (He was cross-examined, I may say, more than a year ago. I had the case before me on appeal in February last.)

Mr. Reily believes, however, that his Head Mohurir Rajendra did state in evidence in that case that Osman Ali called Kailas father. He admits that on Kailas' verbal report he promptly suspended Rajendra, that at the time when he suspended him no charges were framed against him, that they were framed subsequently, that Kailas also brought a separate charge against him, but that Rajendra while still under suspension was transferred to Khulna and that nothing more was then heard of his (Mr. Reily's) proceedings or of the Head Clerk's charge. Nothing further, says Mr. Reily, has been done on the proceedings which he drew up against Rajendra since his transfer; he allowed the Head Clerk's charge to drop. Mr. Reily does not know whether Rajendra's transfer had anything to do with his suspension; the Deputy Inspector-General, he says, transferred him. He was under suspension when he was transferred.

Rajendra may no doubt have been transferred in the ordinary course of official changes. But I do not suppose the Deputy Inspector-General, usually or often transfers Head Muhurirs of Police offices without consulting the District Superintendent of Police, especially when they are under suspension. And I cannot help suspecting that Mr. Reily has been more economical of the truth in this matter than befits a Gazetted Officer of Government.

Mr. Reily says that the new Head Mohurir, Upendra Nath Bose, keeps all his diaries. But he cannot say that the Head Clerk did not keep them. And whether or not the Head Clerk was in nominal charge of the diaries, it is pretty obvious that he would always be able to see them; for when he had just turned out the old Head Mohurir, the new one was likely to be pliant enough.

Mr. Reily's memory and knowledge as to his leading subordinates are distressingly defective, but he admits that Kailas has been Head Clerk of the Police Office the whole time he has himself been here—close on three years. He admits also when cross-examined by the defence pleader (who had cited him for the defence)—his memory became astonishingly vivid then—that Osman Ali has been in Government service for more than 25 years, and has all along, he believes, been in this district. Mr. Reily also admits that whenever he has had anything, specially difficult to do—any specially difficult case—he has usually put Osman Ali on it; that he has had every confidence in him. And although Mr. Reily may not know the relations which subsist between his trusted Daroga and his trusted *Kerani*, although for all *he* knows they may be on *bad* terms, I think the rest of us will have little difficulty in concluding that whether or not Osman Ali calls Kailas "father," the two men are as thick as thieves usually are.

The summonses which Osman Ali served directed the witnesses to appear at the Police Office on the 12th September. On that day complainant appeared at the Police Office and filed a *hazira* (attendance list) of 32 witnesses (two seems to have been added in a postcript to the original 30). This *hazira* is Exhibit B 7.

Mr. Reily says that he was engaged from 1.30 p.m. to 4.30 p.m. in examining thirty of these witnesses. He "believes" the Head Clerk was present when he examined them.

It is well known that the common people in this district speak a corrupt *patois*, which it is extremely difficult even for Bengalis from other parts to understand. I have been 15 months in Noakhali, and am only beginnng to understand it myself, and that though I have received monetary rewards, both in England and India, for my knowledge of Bengali, and am as Englishmen go a fair Sanskrit scholar.

The defence pleader tried to make out that Mr. Reily must have understood all or most of what the witnesses told him. But even Mr. Reily has to admit that if he could not understand the whole answer of the witness he perhaps might not be able to detect mistranslation by the Head Clerk. He admits that the Head Clerk translated such of his questions as the witnesses did not understand and such of their answers as he himself did not understand. He also admits that complainant (who is unacquainted with English) had no pleaders or mukhtear with him and that there was no one on his side who knew English and could have said if the Head Clerk translated wrong. At present he cannot recall to his mind that the Head Clerk suggested any questions, but he cannot swear that the Head Clerk did not.

As far as Mr. Reily can remember he thinks the depositions were read over to the witnesses. They were translated to the witnesses by the Head Clerk. He thinks, however, that there is not any note in the depositions that they were read over.

It is, perhaps, hardly necessary to add that in Mr. Reily's diary Exhibits (B 5 and B 6) and the "statements" attached to it (Exhibits B 8 to B 16 inclusive) there is not a word about the part the Head Clerk played in the matter: and as stated above Mr. Reily at first only "believed" he did not know that the Head Clerk was present at all.

On the 13th September Mr. Reily examined the accused. On the 14th and 15th he went to the place of occurrence and prepared, or says that he prepared, a plan of it. He has never visited the place of occurrence after the 15th September, and it is important to note that the way there leads through densely peopled country, so that he could not go there and "get up" the locality afterwards if he did not do so then, without people knowing it.

After finishing the plan Mr. Reily says, he went and saw the District Magistrate, showed him the plan and told him what he had done. That may, Mr. Reily says, have been two days after.

Mr. Reily says that Mr. Ezechiel afterwards told him to submit B Form, but he hopelessly contradicts himself as to this B Form, and I regard his statement that Mr. Ezechiel told him to do this with very grave suspicion. If Mr. Ezechiel believed the case he would order A Form, if not B or C Form. Directly he got any final report from the Police at all, and when he did get it, it was a C Form. Mr. Ezechiel ordered A Form, and the inference I draw is not that Mr. Ezechiel at first disbelieved and then believed the case—there was nothing to make him change his mind—but that he all along believed it, that Mr. Reily and the rest of the Police knew that he believed it, and that they were keeping back the final report as the Police so often do in order to gain time.

Mr. Reily admits that he did not submit any written report to the District Magistrate till the latter ordered him to do so. He offers no explanation of the delay. He does not recollect if he showed Mr. Ezechiel his diaries and is not sure if he told him what the witnesses had said.

On the 21st September eight men presented a petition (Exhibit 4) to the District Magistrate. The names of these men are:—(1) Torap Ali, (2) Atar Ali, (3) Abdul Aziz, (4) Rajab Ali, (5) Hasan Ali, (6) Abdul Majid, (7) Nur Mia, (8) Haidar Ali.

Of these petitioners it is in evidence that 2, Atar Ali, shortly afterwards died. Torap Ali, Abdul Aziz, Rajab Ali, and Hasan Ali have been examined in this Court.

The purport of Exhibit 4 is as follows:—

That the petitioners had deposed before the District Superintendent of Police in favour of the complainant Idris, the son of the murdered man.

That at first Osman Ali, Sub-Inspector of Sudharam Thana, was investigating the case, but that as these accused were relatives and clients of Osman Ali and his connection Amjad Mir, Idris, apprehending that a proper investigation would not be made, had petitioned the Magistrate and that the Magistrate had made over the investigation to the District Superintendent of Police.

That thereupon the said Daroga had urged them not to depose, but that they had not minded him and had told the District Superintendent of Police the truth.

That ever since then the Daroga had been threatening them and everyone else who aided complainant, both before their faces and behind their backs, and that they were in great fear.

That on the previous Saturday (15th September 30th Bhadra) when the District Superintendent of Police had come to the place for a local inquiry the Daroga had accompanied him, and that when the District Superintendent of Police had gone off and they were about to go to their homes, the Daroga had met them at Peshkar's Hat and had abused and threatened them, saying that he would "pour water on their heads," "put them in jail," "turn them out of the country," and the like, and that they had heard from others that the Daroga was really in arms (literally sword in hand) against them.

That they were poor people and residents of the Sadar Thana and that Osman Ali was a wealthy man and a high Police Official and that they were not in a position to fight him.

That the Magistrate was their protector and was the Daroga's master, and that they therefore prayed that orders might be passed to see that they were not molested.

Mr. Ezechiel on the 21st September sent this petition to the District Superintendent of Police for note and return. It does not appear to have been returned till the 25th September when I find another note "seen" signed by Mr. Ezechiel. So far as the evidence shows, Mr. Reily never inquired as to the truth or otherwise of the petition.

Eventually on the 28th September (the case having then been over a month in the hands of the Police) Mr. Reily sent the District Magistrate a C Form (Exhibits Y 1 to Y 3) prepared by Osman Ali, and attached to it his own reasons (Exhibits Y 4 to Y 8) for considering the case to be false.

The date deserves notice. It was the day the Courts closed for the Puja holidays. It is a favourite native trick—it was played on me in the Mymensingh case—to do things at a time when the European Officer, if he is effectually to circumvent the villany of his subordinates, must forego a holiday which he is certain to want and as often as not needs. Now I do not wish to bring my own private knowledge into this case more than I can help, but I know Mr. Ezechiel was at Darjiling for the Pujas, for he shared a bed-room with me, and I know that Mr. Reily knew that he was going there.

And accordingly Mr. Ezechiel when he passed orders, as he did at once (on Exhibit Y 1) to send up A Form, was obliged to direct that it should be sent up for October 15th, thus giving the Police 17 days more to tamper with the witnesses.

Mr. Reily's opinion that the case was false is not relevant: nor do I suppose that anyone will pay much regard to the grounds for that opinion—at all events when considering the guilt or innocence of the accused. There is, however, one statement of Mr. Reily's (in Exhibit Y 8) which I think myself bound to notice, if only in fairness to the murdered man's widow and child.

"It has been proved," says Mr. Reily, "that the deceased's wife was carrying on an intrigue with Sadak Ali. . . . . Even the complainant's mukhtear Jashoda Kumar Rai admitted the above fact."

The paragraph is artistically worded and certainly suggests that Jashoda Kumar Rai admitted the intrigue. As, however, it is also susceptible of another meaning, it is fair to Mr. Reily to say that he may have meant only that Jashoda (whose statement he recorded in Exhibit B 27) admitted that this Sadak Ali (who is a different man altogether from accused Sadak Ali) had been conducting complainant's case.

But it is also fair to the widow and her child to point out that, so far as his diaries show, Mr. Reily had no foundation for his statement beyond the assertions of some of the accused made behind complainant's back (*vide* Exhibits B 18 to B 22), that no sane man, not even a District Superintendent of Police, could think such assertions made by men accused of murder a sufficient foundation for such a charge, and that Mr. Reily himself evidently felt this, for on the 15th September (*vide* his special diary for that date, Exhibit B 24) he instructed the Inspector and Sub-Inspector to inquire how far the allegation was correct.

It does not appear that any evidence was ever elicited to support the charge, either from Jashoda Kumar Rai or from anyone else, and I need hardly add that before the Magistrate and in this Court (till I asked the defence pleader if there were anything to warrant it) it was never even mentioned.

The charge was made against the widow of a man who had just been murdered. It was made because his boy tried to bring his father's murderers to justice. Not only is it wholly false, but I think myself bound to express my deliberate opinion that when he made it Mr. Reily cannot have believed and did not believe it to be true.

On the 15th October the A Form was submitted and was made over to Babu Kali Sankar Sen, the Senior Deputy Magistrate, for disposal. On the 16th October the examination of the witnesses by the Magistrate commenced. And from that date, to use an expressive colloquialism, it has been all over but the shouting.

On the 10th December, 1899, after all his attempts to intimidate me in connection with the Chupra case had failed, Sir John Woodburn endeavoured to cover his retreat by saying that at all events I must admit that my judgment was very long. And when I replied that it was full of facts, he rejoined that any other Judge but myself would have disposed of it in two pages. And in a Resolution of the Government of India No. 1003-1014, dated the 18th April, 1900, which, as a copy of it was sent me by the Government of Bengal under cover of an official letter No. 332-J.D., dated 30th April, 1900, from their Under-Secretary (Exhibit X 21), I suppose I am expected to attend to, exception is again taken to the great length of my judgment.

The judgment in which I ventured to comment upon the conduct of Lord Curzon's officers was after all not half as long as the Resolution whereby he endeavoured to whitewash them. But I admit that a much shorter judgment would have sufficed in the Chupra case if the only thing I had had to consider was the guilt or innocence of Narsingh Singh. And in this case a good deal shorter judgment would have sufficed if the only issue, or if the only important issue, were the guilt or innocence of Sadak Ali and his three co-accused. For in Narsingh Singh's appeal there was no doubt whatever that the man had really done nothing, at all events, nothing legally punishable, and that he had been thrown into jail merely to save the face of the Executive, and in this case no sane man can doubt that some, at all events, of the accused are guilty of the murder laid to their charge. Nor are the facts very complex.

If, therefore, my judgment is long, it is not because the case is not really simple enough, but because the tale of all official wrong-doing is a long one, because those whose duty it was to bring these accused to justice have moved heaven and earth to screen them, just as in the Chupra case, those whose duty it was to protect the appellant moved heaven and earth to crush him.

There is a story told of a boatswain whose painful duty it was to administer corporal punishment to a friend. First the sailor wanted the lashes higher, then lower, then higher again. Finally, the boatswain lost all patience and exclaimed "Hang it all, Jack, I believe you don't like being flogged at all!"

The way in which I have occasionally thought it necessary to comment on executive officials has excited a good deal of adverse criticism, and I doubt not that criticism or some of it has sometimes been deserved. For I am a man very much like other men, and must needs often do wrong. All I can say for myself is that bad as my work may sometimes have seemed, it has been the best which on that particular occasion I could do.

Yet would I ask my official superiors to remember that it is really very difficult for me to do justice without offending them. I suspect, as the boatswain did, that they

really do not like being flogged at all, that no way of administering the chastisement is likely to please them. And I say this because I have had it remarked to me that it is not the things I do which are objected to in high quarters so much as the way I do them.

It would be better if the higher officials of Government did not think, as they do think, that it is their policy and their duty (I know that with men in their position *utile* is apt to seem *honestum*) to screen their guilty subordinates and to reserve all their indignation for any one who thinks it his duty to expose those subordinates' guilt. Their maxim would almost appear to be, "It must needs be that offences come, but woe to that man by whom the offence cometh!"

In the Chupra case resolution the Viceroy has remarked that the case cast discredit upon the Government to which the officers concerned belonged, and that it had materially weakened the authority and prestige of Government. His principal regret, however, seems to have been "that the Government of India had been compelled to take notice of the matter."

Now I have never been much alarmed by the bogey of lost prestige, though I know that to some men it is a fearsome monster. I think we are strong enough in India to be, I do not say generous, but just, that justice will increase our strength and not diminish it. And I have been longer in this country than Lord Curzon, and should know more of the mofussil than most of his advisers.

But whether or not the views of the Indian Government on these matters are sound, I do not think I ought to pay any regard to them. A judge has nothing to do with politics or with considerations of political expediency. I have to be just whether or not it pays to be just—whether or not it pays the Government as well as whether or not it pays me. And I may humbly remind my official superiors that they as well as I are servants of the public. So far as official status goes Lord Curzon differs from me only in this that he is not, and that I am, a member of the permanent Civil Service of the State, and I have to consult not the interests of His Excellency but the interests of His Excellency's master the King in Parliament. And I am indebted to a commercial friend of mine for the metaphor that what I am doing may be bad for the Directors, but that it is good for the shareholders.

And to show that the course which I am taking in this case and which I took in the Chupra case is not without warrant of Judicial authority, I will permit myself to quote some portions of the judgment of the Allahabad High Court in the case of Queen Empress *versus* Hor Govind Singh, reported in Indian Law Reports 14, Allahabad 242. The remarks quoted are applicable very literally to the Chupra case, and *mutatis mutandis* apply here also: for it is the duty of a Court to see not only that persons accused before its subordinate Courts get a fair trial, but also that murderers do not escape justice by the connivance of the public servants who are paid for detecting their crimes and bringing them to punishment.

The judgment is that of the Chief Justice, Sir John Edge, two other Judges, Tyrrell and Knox, concurring.

"It is hardly necessary to say," he observes, "that when a person is convicted of an offence under the Indian Penal Code and has a right of appeal to a High Court, and exercises that right of appeal, he is entitled to allege, and in the best way he can to prove, that there was no valid trial according to law; that the Judge who tried him acted illegally and with material irregularity in the course of the trial; that the Judge by his conduct of the trial precluded a fair trial being had. . . . Further, it need hardly be said that when such serious allegations are *bonâ fide* raised by an appellant in a High Court, it is the duty of the High Court to consider them, and however unpleasant it may be for the Sessions Judge or for the Judges hearing the appeal, it is the duty of the Judges who have to decide the appeal to express their opinions as to the correctness or otherwise of those allegations, and as to the effect of them if substantiated on the case. When in an appeal, whether it be in a Civil or in a Criminal case, it appears to the Judges of a High Court that the Judge of a Court subordinate to the High Court has acted illegally or irregularly in the case under appeal, it is their duty not only to the appellant in the particular case, but in the interests of the Government and of the public, to speak plainly and to point out in what manner the provisions of the law have been violated and its requirements disregarded. It is of greater moment to the Government and the public, if possible, than to one accused of a crime, that criminal trials should be conducted regularly, decorously and in accordance with law and statutory procedure, and that no ground for doubting the competency or the impartiality of the Judiciary should be afforded by a departure, on the part of a Sessions Judge or a Magistrate, from the rules of law or the rules of procedure which, as a Judicial officer, he is bound to follow, or by a High Court *passing over in silence and without comment* such departures when they are material. *High Courts are responsible for the due administration of the law by the Courts subordinate to them*, the duty of superintendence having been imposed upon them by their Letters Patent. Indeed, the Government of India in one well-known case claimed the right to rebuke a High Court for the non-performance, as it appeared to the Government of India, of that duty of superintendence. It is necessary in this case to consider not only the evidence on the record, but the circumstances under which that evidence was recorded at the Sessions trial, and the most material of the alleged illegalities and irregularities connected with the trial."

My judgment hitherto has been mainly devoted to clearing away the mass of trickery and falsehood under which the Police have endeavoured to bury the features of the case. And that task is by no means over. But I think it time to turn now to the actual evidence incriminating the four men in the dock.

Witnesses Nos. 5 and 6 for the prosecution are Saroda Mohun Chakravarti, the Sub-overseer of the District Board, and Binod Behary Pal, the District Engineer. The Civil List shows that the latter gentleman has held his present position for close upon 17 years, and that his pay from the District Board is Rs. 400 a month. He says he received a written order from the District Magistrate to prepare a plan in this case, that he had the plan prepared by Saroda Mohun Chakravarti, and that he himself tested such portions as he considered important. Saroda Mohun Chakravarti said he made this plan on the 18th November, 1900 (when as the record shows the case was still before the committing Magistrate), and that the District Engineer tested it in his presence on the 20th November, the measurements shown in the margin of the plan in red ink are the District Engineer's own measurement and are in his own handwriting.

Exhibit 5 is this plan. It was admitted in evidence by the committing Magistrate on the 21st November, 1900.

Exhibit 5, as also the evidence, shows that there is a large tank in front of Ismail Jagirdar's house (this is the tank in which his body was found). The *doroja* or entrance of the house is immediately south of this tank and communicates with a highway which runs north and south by the east bank of the tank and which finally merges in the Ichakhali road. To the back (west) of Ismail (or Islam) Jagirdar's house is another road which also goes on till it joins the Ichakhali road. Immediately south of Ismail's *doroja* and about 15 yards south-east of his tank is the *bari* (homestead) of the accused Sadak Ali and Aslam who are cousins and live together. The accused Anwar Ali (house not shown in Exhibit 5) lives close to them 25 or 30 cubits to the south of the tank. North of the tank is the house of the accused Imdadulla (not now before the Court) and north-west of it is the house shown in Exhibit 5 as Abdul Hakim's. Abdul Hakim is accused in this case but is not now before the Court, with him live Karim Buksh (also accused but not before the Court) and Yakub Ali. This Yakub Ali is the fourth of the present accused, he is Abdul Hakim's brother.

There is a path from Abdul Hakim's house which leads past Ismail Jagirdar's house (and between his house and his tank, in fact through his compound) towards the south. The way out of Abdul Hakim's house debouches on this path. There is a road to the south of Emdadullah's house which connects with the path.

The path (whose further course was not shown in Exhibit 5) leads south-west from Ismail Jagirdar's house (after first going a few feet east) past the *doroja* and *bari* of the accused Naimuddi Miji (not before the Court) and continues past other houses among them that of witness No. 7, Abdul Aziz and that of witness No. 4, Islam.

The most important evidence incriminating the accused, what may be called the direct evidence, is given by witnesses 2, Hosan Ali, 3, Torap Ali, and 4, Islam or (Ismail). Hosan Ali and Torap are witnesses to the same facts; they were not cross-examined on the same day and although the defence pleader said nothing about this when addressing the assessors (and indeed it would have been no use for him to say it to them) a point may be made of it on appeal. I, therefore, think it as well to state that (as the record shows) Hosan Ali's examination-in-chief was completed on the 9th January but the defence pleader asked that the cross-examination might be deferred. As he wished to cross-examine the two men Hosan Ali and Torap Ali on the same day, and as it was 4 o'clock and I had some other work, I allowed this and adjourned the case.

Next day, for reasons stated in the order-sheet (*vide* order No. 4, dated 10th January, 1901), the case was not taken up till 2 p.m. The pleader asked verbally that Torab Ali might be examined-in-chief before he began cross-examining Hosan Ali. Now this was a request which I was not likely to grant, as it was altogether opposed to the usual procedure in Sessions trials, and I have no doubt Babu R. K. Aich never expected me to grant it (similarly when he addressed the assessors, and I stopped him from using Osman Ali's diaries as evidence, he expressed surprise and applied verbally to call Osman Ali!). I told him, therefore, that he must cross-examine at once, but added that I was quite prepared to sit later than usual, and that there would be plenty of time for the cross-examination of Hosan Ali and the examination and cross-examination of Torap Ali, as the examination-in-chief of the latter was not likely to take very long.

As the pleader went on cross-examining, however, it became very evident that he was in no hurry to bring the cross-examination to a close, and after an hour and-a-half of it I hinted to him that my offer to sit late must not be construed too liberally. On this he said that the cross-examination of Hosan Ali would be so long that he would not ask me to sit beyond the usual hour. He went on cross-examining till 4.40 p.m., and when he sat down must have done so with the consciousness that even though Torap Ali might be examined-in-chief it was not at all likely he would be called upon to cross-examine him.

In saying all this I am far from wishing to reflect upon Babu R. K. Aich, of whom, on the contrary, I have a high opinion. The defence of persons accused of murder even if believed to be guilty, has always been accounted legitimate by the legal profession, and I am a member of that profession myself and may before long have to fall back upon it for a living. Having accepted the accused men's brief, it was Babu R. K. Aich's duty to do his best for them. But I think I am fully justified in the remark that he evidently thought that the course he was taking was the best he could do for them, that it was more to their interest to reserve a point for (possible) use before the appellate tribunal, than to cross-examine the two witnesses on the same day. And the natural inference is that the accused men's pleader either thought that these two peasants had been so carefully coached that it was hopeless for him to attempt to break them down or that he believed that the story they were telling was a true one.

These two men live not far from each other on the Ichakhali road, some four miles from Sudharam (Noakhali). They say they had been to Bellew Shahib's *hat*, which is perhaps 1½ miles out of Sudharam on the Lakimpur road. I may explain that in this District permanent shops are very few, and nearly all marketing is done at these small *hats*, which on the market days (usually twice a week) are crowded with people, but at other times are nearly or quite empty. Hosan says he went there with two seers of *chilis* he had for sale and that he bought a *paral* or fish trap which he brought away with him. Torap went there because he had some betel-nuts to sell and heard the price at this particular *hat* was up. He sold his betel-nuts he says and bought two ducks. Hasan says he does not know why Torap went to the *hat* but that Torap had two ducks with him.

A little before sunset it came on to blow and rain heavily. The two men met at a blacksmith's shop in the *hat*, where they and a number of others took shelter from the rain. It stopped raining about two *dundas* (=48 minutes) after sunset and the two then set off on their homeward journey. The road they followed is indicated on Exhibit 5 by the letters A B C D E F G H I J K L M N R S T. At H it will be seen the road they took meets the road south of Imdadullah's house. That road then goes a few yards east and then turns south at I whence it proceeds in a generally southern direction till it merges at K in the District Board highways known as the Ichhakhali road. From the point marked I the road the two men took passes to the east of Ismail Jagirdar's tank. Like most such tanks the banks of this tank are somewhat raised above the general level and are covered with trees and vegetation. The tank itself, says Hosan Ali, is about 56 yards from the road (from the view I had of the plan I should say this was an over estimate—there is however an appreciable space at least 20 yards and probably in most places 25 or 30 yards between the tank and the road). The *doroja* south of the tank is at first a good distance from the tank but gradually approaches it till as it gets near the house it touches it—this is not shown, or at all events not clearly shown in Exhibit 5. It is true that right up to the ghat—the steps shown in the tank—there is always some intervening space, but as it approaches the ghat it gets less and less.

The two men got to this tank at six *ghoris* after sunset according to Torap at four or six *ghoris* according to Hosan. When they had got about opposite to Ismail's *doroja* some 60 or 80 cubits by a rough guess, says Hosan, from the point I the two men heard a cry of *mago* (=mother). This is the universal cry of the Bengali when dying, in terror, or in great pain.

At this time the witnesses say—and this applies to other witnesses as well—it had cleared up and though there was no moon, the stars were shining. The cry, say Hosan and Torap came from a distance of 17 or 18 cubits, eight or nine yards. They hastened forward towards the direction of the sound, and saw three men; the first three accused, holding or carrying Ismail Jagirdar. Sadak Ali had him by the throat, Aslam by the waist and arms and Anwar Ali by the legs. They were carrying him towards the west.

Torap Ali says that he got within three or four cubits of the men, and spoke to them, saying they would get the whole village into trouble if they killed Ismail Jagirdar (literally "It is not good; are you killing Ismail Jagirdar or are you setting fire to Chur Uria?") Hosan does not say this: he merely says they advanced towards the three men who were carrying Ismail. The two witnesses agree in stating that as they approached these latter, a number of other men whom they could not recognise, six or seven, according to Hosan, four, five, or seven according to Torap, came forward from a distance of 15 or 16 cubits seven or eight yards) further west and called out "seize them."

The place where the three accused were carrying Ismail is on the land of Sadak Ali and Aslam, just south of Ismail's *doroja*. It is under a date tree, which is shown in the plan, Exhibit 5, and is some 20 or 25 yards from the row of trees fringing Ismail Jagirdar's tank. According to the Sub-Overseer's note, it is 320 feet (a little over 100 yards from the Jagirdar's house). It is described, in the quaint Bengali English, as "Place where the two witnesses saw to catch hold the person killed."

When the witnesses heard the cry they were a little to the north of this place. The men, who came from the west were on a level with them. It is probable, though the witnesses do not say so, that these other men were in the *doroja* of Ismail which is a short distance from the road, is a cutting between high banks covered with trees, and would be nearly or quite dark.

On these men coming forward the witnesses made off home along the road. Some very unnecessary cross-examination was directed to the question why they failed to inform the inmates of Ismail's home. The witnesses had about a mile to go before they reached their homes. There are a number of houses on the way. Hosan Ali says there may be 30 or 40. The two men called out to the inmates of some of these houses. It may be explained that none of the houses are exactly on the road, no houses in Noakhali ever are—they are all a little way, some more, some less off it, and are connected with it by *dorojas*. The witnesses did not go to the houses, but called to the inmates from the road as they passed by. The first person they called out to was Osman Ali Chowkidar, whose house is south-east of the road. They neither saw nor heard Osman Ali himself, but his mother or someone, whose voice sounded like his mother's, replied to them. They called to several other persons, to a man whose name they do not know, but who is generally described as "the limeseller" (chuna walla) to Amjad, son of Ashruf, and to Ahmad Ali, but neither these persons nor anyone in their *baris* replied. On the way, however, they fell in with one Atur Ali: at the *doroja* of Har Chander Dutt, and told him what had happened. This Atur Ali was one of the signatories of Exhibit 5, but died before he could be examined.

The next important witness is No. 4 Ismail (or Islam). It may be noticed that the handwriting of his deposition, which was recorded on the 12th January, is very irregular and uneven. The reason is that when recording it I was suffering from an attack of acute gastritis, a disease to which I am subject. I may say that from Court I went straight to bed that Saturday afternoon and remainded there all the rest of that day and most of Sunday.

The nature and symptoms of the attacks are set forth in Exhibit X 34, a copy of a medical statement given me by Dr. R. S. Ashe, the Civil Surgeon of Mymensingh, when he recommended me for medical leave in September, 1898. One of the originals is in the Bengal Secretariat. It was sent by me to Mr. Bolton on 5th September, 1898, with the letter of which Exhibit X 38 is a copy. Mr. Bolton had on that day expressed great commiseration for me and had asked for the statement that he might show it to Sir John Woodburn.

In any climate like that of Noakhali I am bound to have these attacks (I had another one on the 11th instant when writing this judgment). In the rains I average three or four of them a month; they last two or three days. The result is that for a long time past I have taken them as it were in the day's work, and do all such work as recording depositions, deciding comparatively easy cases, and the like, whether I have them or not. It is like a forest officer with fever in some parts of Upper Burma. If I were only to work, when I was well it would be very little work I should do here for six months of the year. I may add that I have more than once applied for leave on the ground of my ill-health, and have been refused it. I have not formally represented the extreme dampness of Noakhali to Government, thinking it useless to do so, but I have applied for a transfer, which I would not have done willingly. I have formally represented the matter to the High Court, but that body in their extra-judicial capacity have seen no reason to interfere. And I cannot afford to resign. So I can only hope that if I did wrong in recording Islam's deposition on the 12th January, it will be recognised that there were extenuating circumstances.

This witness Islam lives, say, half a mile a little west or south from Ismail Jagirdar's. His house is not shown on Exhibit 5, but it is shown in (the left bottom corner of) Exhibit Aa and although this latter place, for reasons which will afterwards be set forth, must be regarded with great suspicion, it not improbably represents fairly enough the position of Ismail's house.

This Ismail had a case on at Lakmipur which was pending at the time of occurrence. In cross-examination he states that it was a suit for *wasilat* (mesne profits) brought not by himself but by his younger brother; and that the defendants in this suit for *wasilat* had brought another, a title suit, against his brothers and himself. Karim Buksh who, as already stated, lives with Abdul Hakim and accused No. 4, Yakub Ali, was a witness for the opposite party in one or both of these suits, and Islam says he went to Karim's house on the evening of occurrence to get him to help in bringing about a compromise which had already been mooted. (As a matter of fact, the witness says, both cases were eventually compromised.) Islam got to Karim's house (that is what "went there" means) at sunset and presumably after talking over matters with Karim Buksh started to return home about a *prohar* (three hours) after sunset.

Karim's house is that shown in Exhibit 5 as "Accused Abdul Hakim's house"; the witness came out of it by the *daraja* which faces east, and proceeded south, then east, then south again (*vide* plan) till he got to Ismail Jagirdar's *bari*; he was in a public (village) road. He then took the private path which crosses Ismail's compound from north to south and passes between Ismail's house (properly so called) and his tank. This, the witness says, is not only the shortest way from Karim Buksh's house to Islam's, but is the one which they, the neighbours, usually take.

Islam had, he says, turned the south-west corner of the tank, had gone two or four cubits east, and was just turning to go south. (I have been to the place, and can say that is the way he would have to go) when he saw just to his left four men carrying what looked like a dead body by the south bank of the tank. They were bringing the body from east to west towards the *ghaut* of the tank, and even within four or five cubits of the witnesses when he saw them. He says that he recognised them, the

accused 1 Sadak Ali, 2 Aslam and 4 Yakub Ali—the fourth man was under the shade of a tree, and he could not clearly recognise him, but he looked, the witness says, like Abdul Halim (the man who was sent up with the present four accused, but was discharged by the committing Magistrate).

Islam asked the men, he says, who they were. On being thus challenged they set down the body under a *badir* tree (pointed out when we arrived at the place—it is on the south bank of the tank, a few yards from the ghaut). Islam was going towards it and asking what it was, when Sadak Ali abused him and told him to be off. The body, says Islam, was laid face downwards and he could not recognise it.

On the men threatening him, Islam ran off home. For a few yards I may say the path he took descends fairly sharply to a lower level. Before going far one comes to the *daraja* of Naimuddin Miji. When he got to this place, says Islam, he saw eight men sitting on the road conversing together. Among them he recognised Naimudin Miji himself, Emdadullah, and Abdul Hakim Kobiraj—the same Abdul Hakim who is brother of accused No. 4 Yakub Ali.

Islam says he spoke to Naimudin and told him what he had seen. Naimudin, however, told him, "Be off, *Sala* (a vulgar term of abuse), mind your own business," and Islam went on. After going a little way, he says, he came to the *daraja* of Abdul Aziz, and as he was frightened, called out to the latter. After being twice called Abdul Aziz came out and asked him what was the matter. Islam told him everything, he says, and Abdul Aziz went some part of the way home with him.

After his examination was over this Islam—who was certainly "all there" in the witness-box—some of his answers in cross-examination recalled a creation of Dickens—complained in excited tone of the mal-treatment to which he had been subjected by the local Police while attending my Court, and he was corroborated by the Government pleader. I thereupon sent a note to the senior Munsif, Babu Lalit Kumar Bose, to enquire into the matter. Babu Lalit Kumar Bose's report (No. 72, dated 14th January, 1901) and its annexures are filed with the record; they are not of course evidence against the four accused, but it may be necessary to refer to them hereafter when discussing the conduct of the Executive authorities during the trial.

The Abdul Aziz mentioned by Islam is witness No. 7. (He should be distinguished from No. 8 Abdul Aziz the ferry man). In theory it is perhaps to be regretted that he was not examined the same day as Islam. This was due to the fact that the Government Pleader asked that the two District Board witnesses should be examined on the 12th January (Saturday) as the District Engineer wanted to go to the Mufussil. No objection was raised by the defence, and as in the case of Hosan Torap, so here, I mention the matter only because something may be made of it when the case comes before the High Court.

Abdul Aziz says he was sitting in his hut when he was called. He came out to his *daraja* and Islam asked him to come a little way with him, as he had got a fright. Islam said that he was coming by the west bank of Ismail Jagirdar's tank, when he saw three or four men carrying what looked like a dead body. Abdul Aziz asked if he had recognised the men, and Islam replied yes, they were Sadak Ali, Aslam and Yakub Ali. Abdul Aziz said he did not ask anything more, but after this went some way with Islam and then returned home. This Abdul Aziz was one of the men who petitioned the Magistrate about Osman Ali Daroga threatening them: other petitioners as already stated were the two eye-witnesses, Hasan and Torab, the Atar Ali whom Hasan and Torab say they told about the occurrence just after they had seen it, and Rajab Ali (witness No. 9).

Rajab Ali says that just as the sun was setting he saw the four accused under a *but* tree on the Ichakhali road. This *but* tree is shown in Exhibit A*a*. It is east of Utsara Dighi the (Dighee of Exhibit 5) and on the other side of the road from the dighi (tank)—just in a line with the point J. I have taken it down that Ismail Jagirdar's house is three-quarters of a mile south-east of that place: but this must be a mistake of mine—the place is really about three-quarters a mile south-east of Ismail Jagirdar's.

Rajab Ali says the four accused were talking together, some sitting and some standing. After he himself had gone a little way on, he noticed that they were going west along with the north bank of the dighi *i.e.*, towards J). (The witness himself had gone round the east bank of the dighi. and was proceeding west along the Ichakhali road, so it was easy for him to see them, they being as it were parallel with him on the other side of the tank.) The road along the north bank of the dighi, I may point out, connects at J with that leading up past Ismail Jagirdar's house.

Then there is the evidence of witness No. 8, Abdul Aziz. This witness' cousin is lessee of the ferry between Lambakhali (10 kanis from Ichakhali the old steamer station, recently abandoned in favour of Lambakhati on account of the constant diluviation) and Chur Lakhia. The witness says that the ferry boat is plied by his cousin, his brother and himself, with the assistance of hired boatmen (mallas). The afternoon, before the occurrence, they had come back from Hatiya at 3 p.m. and this boat was moored at Ichakhali. The witness says that they stay at Ichakhali for passengers, as there is no *khal* at Lambakhali. (We here know this to be true—indeed most of the places mentioned in this case are as familiar to the assessors and myself as Bond Street and Pall Mall are to a Londoner.)

Abdul Aziz the ferryman says he was asleep at Ichakhali bazar in the early hours of Sunday the 26th August. About 2 or 3 a.m. Sadak Ali and Aslam came there. Sadak Ali, the witness says, woke him up and asked him what manjhies there were. Sadak Ali began the conversation. Aslam joined in it afterwards. The witness said he was a manjhi (man in charge of a boat). Sadak Ali then asked when the boat would start, and Abdul Aziz replied that it would leave for Chur Lakhi on the flood tide about 2 or 3 a.m. The witness then asked "How many of you are there?" and Sadak Ali said "We two." The ordinary fare for passengers to Chur Pagla, says Abdul Aziz, is two annas a head only and on Sadak Ali's saying there were only two of them, the witness told him there were six or seven boatmen, and it would not pay them to make the journey. The men said they would think a bit and make them an offer. The witness asked how much? Sadak Ali offered a rupee, Aslam two rupees, and finally Sadak Ali got up to three rupees; but the witness held out for four, and eventually Sadak Ali went away saying he would consult other people and did not return.

The witness says he informed other people of this matter a day or two afterwards. He did not depose before Osman Ali Daroga but he deposed before Mathur Babu, the Inspector, who under orders of the District Magistrate eventually sent up the case.

This witness seems to be a man of some substance and it may be worth while to mention a remark of one of the Assessors, when the defence pleader suggested that he might have been bribed. The Assessor rejoined that no doubt he might have been, but that with a man like that several hundred rupees would be wanted, and who was to give them.

Then there is the evidence of Mohabat Ali. This man is a resident of the village of occurrence, but mysteriously disappeared just before the trial. As the Police forgot to take any recognizance from him (or from any of the witnesses for the prosecution) to attend before this Court, it appears that he will escape scot free for his failure to appear. It is, however, proved by the evidence of Idris and of witness No. 17, a constable named Mohim Chandra Das, that search has been made for him and that he cannot be found, and his deposition before the Committing Magistrate has been admitted in evidence under Section 33 of the Indian Evidence Act.

This witness said in the Lower Court that early that Sunday morning he met Sadak Ali on the Chur Uria village road. He was going towards the south with his wife and with a child in his lap, and after repeated enquiries told the witness he was going to his son-in-law's. Mahabat Ali did not say where he met Sadak Ali, and as he disappeared at the trial in the manner above described, it was not possible to question him upon the point. But it is interesting to compare his evidence with that of Idris, who says he met Sadak Ali near the Mukhtear's at 7 or 8 a.m. Sadak Ali would seem even from the evidence of persons other than the eye-witnesses of the occurrence to have been extraordinarily active that night and early morning. Ichakhali I may say is a good four miles from Sudharam.

There is then the evidence of the accused men absconding after the crime. Too much of course should not be made of this, the accused were men who would naturally be suspected. But till a comparatively late hour on Sunday it was not known that Ismail had been murdered at all and till this was known there was no reason for anyone but the murderers to abscond. The extraordinary officiousness of the accused Yakub Ali and other enemies of the deceased on the morning of that day, and their attempts, which at first proved successful, to get Idris to report the death as an accident, have already been noticed and point to their knowing more of the circumstances of Ismail's death than would be known by innocent men. The anxiety of accused of Sadak Ali and Aslam to get away from the mainland that night, and Sadak Ali's presence near the Muktear's at Sudharam early the following morning have not been explained. It has been proved by the evidence of Idris and other witnesses that the houses of the four accused were deserted for several days after the occurrence. Even Mr. Reily, although at first he tried to lie about it, had at last to admit, when pressed by the Government pleader that he went to the house of Sadak Ali and Aslam on the Tuesday morning and found it deserted, and he is corroborated by the defence witness Head Constable Kista Chandra Bhadra, who shuffled and lied if it be possible even worse than his master. Mr. Reily also had to admit that "as far as he can recollect he does not think" that he found or met with any of the accused that Tuesday morning. No explanation of their absence has been offered.

There is also some important evidence given by Mr. Reily and Head Constable Kista Bhadra as to the signs of struggle. Mr. Reily says Osman Ali showed him a place about a 100 yards from Ismail's hut and about 70 yards from the tank, and that he saw marks which looked as if there had been a struggle there. This description would about tally with the date tree or rather would be a good deal south of it, but Mr. Reily admits that the distances are only guesses, and it is certain he must be mistaken, or at all events that what he says is incorrect. The place pointed out to me by both parties as the place where the signs of struggle were found is that indicated in the Head Constable's evidence. It is on the road which leads by the south bank of Ismail's tank up to his door, north of the *bari* of the accused Sadak Ali and Aslam in short, on Ismail's *daraja* and it is in that part of the *daraja* where there is a depression —in the dark cutting or gut already referred to. The witness (who be it remembered, arrived before the daroga) found footprints and kneeprints on both sides of the path and a plant about a cubit high had been broken.

I now come to the evidence of motive which is very strong. Sadak Ali, Aslam and Anoar Ali are all tenants of deceased, and none of them will pay their rent. Sadak Ali says Idris has not paid any for five or six years. Ismail first brought a suit for ejectment against Sadak Ali and Aslam and got a decree, but the two men took a *nim haola* settlement from him and stayed on. He afterwards sued to enhance the rent of the *nim-haola* and again got a decree. Three or four years ago Ismail brought a criminal case for assault against Sadak Ali, Abdul Hakim (the brother of Yakub Ali) and two other persons in which Sadak Ali was fined. Later, two years ago, he brought another assault case against the same four persons and Yakub Ali, but this latter case was dismissed. Against Aslam and Anoar Ali Ismail brought rent suits, which were still pending at the time of his death. The accused Yakub Ali has an uncle named Jatmadin. Ismail brought a suit against this Jatmadin on a mortgage bond, got a decree, and bought Jatmadin's *bari* (homestead) at the execution sale. Jatmadin, Amiradin, Yakub Ali and Abdul Hakim opposed deceased in taking possession: and deceased then brought a title suit against them and got a decree. This was three or four years ago. Deceased after getting the decree took possession of the homestead, but later on Jatmadin's son Aminadin felled and removed a tree from it. Ismail then brought a criminal case and Aminadin was fined. About two years ago Ismail's son, the witness Idris, was assaulted as he was going to that homestead by Yakub Ali accused and his brother Abdul Hakim and the same day these two and their cousin Aminadin looted some paddy from other land of Ismail's. For the beating Idris brought a criminal case, in which Abdul Hakim was sentenced to a week's imprisonment and Rs. 10 fine. For the loot Ismail brought another criminal case in which the same Abdul Hakim was sentenced to a week's imprisonment and Rs. 20 fine. Ismail also sued and got a decree for the mesne profits of Jahiradin's homestead. One Esab brought a case of cattle theft against Ismail, at the instigation it is said of these accused. Sadak Ali gave evidence for the prosecution in that case which resulted in Ismail's acquittal. Ismail let out three *koras* of land to Sadak Ali, and as the latter would not give it up (and apparently would not pay rent for it either) Ismail resumed possession by force a month or a month and a half before the murder. One day later on Sadak Ali came to this land and threatened Idris and his father, saying they had done for themselves by taking the land. The very day before Ismail started on the journey from which he never returned alive the Friday Ismail and his son were trying to impound some cattle of Sadak Ali's which were eating their paddy, but desisted in consequence of the threat of Sadak Ali and Aslam, the former of whom said this was the last thing (?) would do (literally this is your last time).

These facts are mostly derived from the evidence of Idris the son of deceased; they are not gainsaid but a number of decrees, judgments and the like (Exhibits 6 to 22 inclusive) have been filed to corroborate the oral evidence. The evidence of Kali Kumar Das, Ismail's pleader, is also important in this connection. He proves that on the day of occurrence rent suits of Ismail's were pending against the accused Aslam (who lives with Sadak Ali) and Anwar Ali, and that the very case in which Ismail gave evidence that day was one brought by his witness against Abdul Karim and Karim Buksh, the latter of whom, as already stated, lives with the accused Yakub Ali and his brother Abdul Hakim.

We have it therefore that deceased had had constant litigation, both civil and criminal, with all four accused, that on the night of occurrence he had suits pending against two of the accused (Aslam and Anwar Ali), was returning from giving evidence against the "mate" of a third (Yakub Ali) and had been threatened so lately as the day before by the fourth (Sadak Ali).

I now turn to the defence made by the four accused men themselves. From the committing Magistrate's order sheet it appears that on the 6th December, three days after the examination of the witnesses was concluded, he heard arguments, and it was not till after then, till the 7th, that he examined the accused. This was a somewhat unusual procedure, but obviously it was to the advantage rather than otherwise of the accused.

On the 7th December the day after arguments were heard, the four men filed a joint written statement (Exhibit 29) the purport of which is as follows:—

1. We are not guilty; we did not murder Ismail Jagirdar; we have unjustly and falsely been accused owing to a conspiracy.

2. Nunda Kumar Das *alias* Nanda Basi Das, Nanda Thakur and Sadak Ali, residing in our neighbourhood, are very litigious people and are "tornis" (village touts, corruption of "attorney"). During the police investigation they threatened and extorted money from several villagers and demanded money of us, and as we refused to pay, they have tutored their neighbours and got up other false evidence long after the occurrence and brought this charge.

3. As a matter of fact we are quite innocent.

When examined orally by the committing Magistrate the accused declined to say anything more. And with the exception of accused 2 Aslam they have been equally reticent in this Court. Aslam says that he is a very poor man without even a hut to live in, and that on the night of occurrence he had fever and headache and could not go out of doors or even take his food. He says he had paid his rent all right, but still Ismail sued him. He also says that deceased's family bear him a grudge because he

did not depose when cited in Ismail's defence in the cattle theft case. The charge against him, he says, has been fabricated by the three men named with the help of Joshoda Babu (the mukhtar); they have charged him because he would not give them money.

To deal first with these separate allegations of Aslam, it is to be remarked that no attempt has been made to prove that he was ill and confined to his house on the night of occurrence; that it is in evidence that he and Sadak Ali live in the *bari* immediately south of deceased, and that no attempt has been made to show that Ismail cited him as a witness in the cattle theft case—a thing grossly improbable on the face of it as Aslam was living with Ismail's bitter enemy Sadak Ali. If Aslam be a very poor man, it is difficult to understand why anyone should try to extort money from him. "The empty traveller will whistle before the robber and his pistol."

Proceeding next to the more general allegations of the four accused there is no evidence whatever as to the litigious disposition of Nanda Kumar Das *alias* Nanda Basi Das of Nanda Thakur or of Sadak Ali, nor is there any evidence that they are "tornis" or touts or that they threatened or extorted or attempted to extort money either from the men in the dock or from anyone else. Nor does it appear at all likely that if these men or any of them really extorted or attempted to extort money from any of the villagers, there would be any difficulty in getting the villagers in question to say so, for there can be no question that the whole power of the Police Department from the District Superintendent downwards has been thrown into the scale on behalf of the defence.

It appears therefore that the defence set up by the accused themselves has entirely failed. I may remark before passing on to other matters that there is no evidence that a single one of the witnesses for the prosecution is in any way connected with either of the three men said to have fabricated the case, and that these three men are on the showing of the defence men of no particular consequence.

From the defences set up by the accused themselves I turn to the defences set up for them.

The first of these is that the witnesses who now testify that they saw Ismail being carried, Hosan, Torap and Islam did not depose before the Police. The all-sufficient answer to this contention is that these three witnesses swear that they did depose before Osman Ali Daroga on the morning of the 28th August at Ismail Jagirdar's *doroja*, and that Osman Ali Daroga does not dare to come into the witness-box and contradict them or (if that way of putting it be preferred, if the very obvious fact, that Osman Ali is financing the defence and *is* the defence, be ignored) that the accused men's pleader did not think it worth while to call him.

The contents of Osman Ali's diaries and his reports are not evidence being statements in writing made by a person who is within a few hundred yards of the Court, but is not called as a witness. The prosecution are not called upon to explain the fact that he did not send up the accused. His omission to *chalan* them would at most indicate his opinion that the case was false, and such opinion, even though honestly entertained, would not in itself and as distinguished from the grounds on which it was based be relevant. There is, however, a very adequate explanation of Osman Ali's inaction forthcoming, and indeed the defence pleader's decision not to examine him was the best possible indication, how complete that explanation was and how entirely his attempts to negative it had failed.

The explanation is to be found in two facts, the first the extraordinary (I wish I could say unparalleled) ascendancy which Osman Ali has acquired in this district and the second his connection with the accused.

Evidence has been adduced by the prosecution, and with one trifling exception no attempt has been made to rebut it, that a number of witnesses deposed before Osman Ali to facts incriminating the accused, that the most important of these depositions were recorded by him the moment the District Superintendent of Police's back was turned. Every circumstance of time and place is given, a crowd of people are said to have been present and several are actually named. Evidence has also been given that when the witnesses were summoned by the District Superintendent of Police, Osman Ali told them (in one case when handing the witnesses the summons) not to give evidence. This also is said to have taken place at a hât and several names of persons present are given. Evidence has also been adduced that after the men had given their evidence, Osman Ali threatened them on one occasion, the 15th September, just after the District Superintendent of Police had left at Peshkar's Hat, before a number of people of whom several are named. And all these things are said to have happened within three or four miles of the Sadar Station under the very noses of the European District Superintendent and of the European District Magistrate.

It has been urged by the defence that the conduct ascribed to Osman Ali by these witnesses is so extraordinary as to cast doubt upon the rest of their evidence. But it is strange, if he thinks this to be so, that the defence pleader does not put Osman Ali into the bar to contradict these witnesses—to tell a more probable story.

As a zemindari manager once told me in the very house where I have been writing this, the people who have the real power in the moffusil are not (save in exceptional cases) the European officials but the European officials' pet natives. It is the pet

Deputy to whom a native goes when he wants to get anything out of the Collector—Magistrate—the pet native policeman—sometimes Inspector, sometimes Sub-Inspector, sometimes head clerk,—who leads the District Superintendent of Police by the nose and the District Judge's sheristadar is often in everything but the actual disposal of cases a far greater personage than the District Judge. And this is due to two causes—one the enervating nature of the climate and the inertia it produces, and which leads the European officer to leave more and more to the subordinate who saves him so much trouble: the second the fact that between us and the natives of this country there is a great gulf fixed. The causes of this separation between the rulers and the ruled are manifold and need not be referred to here. Suffice it to say that the fact of that separation is notorious and that the natural result of it is that we very often know very little of what is going on around us.

Till I came here the most notable example I had met in these provinces of the type of subordinate I am speaking of was the sheristadar—he is still the sheristadar—of the Judge's Court at Mymensingh. But Kristo Kishore Basak the sheristadar is altogether eclipsed by Osman Ali the Daroga.

Mr. Reily's evidence as to Osman Ali is as follows:—

He cannot say exactly how many years Osman Ali has been here; but he was here when he (the witness) arrived. He has always considered Osman Ali to be of good detective ability. Whenever he has had anything specially difficult to do—any special difficult case—he has usually put Osman Ali on it. Osman Ali has been the only Sub-Inspector he has had whom he could depend on for a difficult case. Mr. Reily believes he has recommended his promotion. He believes he has been promoted while he (the witness) has been here. Osman Ali has received a watch and a medal while Mr. Reily has been here. Mr. Reily has had every confidence in him.

The cross-examination of the defence pleader on this point was mainly directed to showing that other people besides Mr. Reily had had confidence in Osman Ali. This may be granted. The success of a man of this kind depends on his not being found out by his European superiors and many of them, Kristo Kishore Basak for instance, have most beautiful testimonials.

Mr. Reily was more communicative to the defence pleader (who had originally cited him) than he was to me. He can not say for certain, says Mr. Reily, how long Osman Ali has been in service—he has all along, Mr. Reily believes, been in this district—he worked up his way from a constable for a short time. Mr. Reily believes he was in Barisal or Jessore, the witness is not sure which, for about three months. The fool in Mr. Reily is even more prominent than the knave and this flow of information must have rather disconcerted the defence pleader, who merely wanted to get out of him that Osman Ali was a man of long service. When, it may be for want of breath, the witness stopped, Babu R. K. Aich managed to elicit that he believed Osman Ali had been in Government service for more than 25 years. He is in the second grade of Sub-Inspectors. Mr. Reily believes he was given the watch in the time of his predecessor Babu Rash Behari Biswas. The chain was given by the District Magistrate on recommendation adds Mr. Reily, but does not say on whose.

The Government Pleader of this district is a man of strong religious convictions. It is possibly due to this that he did his duty in this case, it may be at the expense of his interest. Many Government pleaders—the one at Chupra for instance would certainly not have done their duty, in this case. Other people, it appears from his cross-examination of Mr. Reily, have not had the same high opinion of Osman Ali as Mr. Reily himself has. Mr. Reily believes that the Sub-Divisional Officer, Feni, called on Osman Ali to show cause why he should not be prosecuted under Section 211 (bringing a false case) in nine salt cases which he chalaned. Those nine cases were (thereupon) transferred from the Court of the Sub-Divisional Officer, Feni, to that of Babu Ashutosh Banerji at Noakhali. Yes, he believes Ashutosh Banerji has dismissed all those cases. He has not as yet taken any action against Osman Ali after the dismissal of those cases. Those cases were dismissed before the puja vacation. He knows that a certain number of cases which Osman Ali had sent up in "C" form were directed by Mr. Ezechiel to be sent up in "A" form. (The question was: Is it not a fact that many such cases, etc. The witness first answered "I believe so." I then asked him if he did not know and his reply was as above). It is a fact that in some of those cases convictions were obtained. He did not take any step against Osman Ali after convictions were obtained in those cases—except calling for explanations.

The Government pleader then asked the witness "am I to understand that after receiving explanations you dropped the whole matter?" The witness replied "I don't think I have dealt with all the explanations as yet."

In answer to further questions of the Government pleader's Mr. Reily said that he knows of a case in which Hamid Ali Chowkidar was complainant and Serajul Huk accused—decided by Babu Sarat Chunder Sen, Deputy Magistrate. It was a case of cattle lifting. He did not take any action upon Sarat Babu's remarks against Osman Ali in that case, but believes that an enquiry was made into them under his orders by the Inspector Bharat Chunder Mozumdar. (This last in reply to a question put by the Court at the instance of the defence pleader.)

The case of Empress *versus* Mohesh Chandra Guha has already been referred to. Mr. Reily says that the District Magistrate Mr. Ezechiel ordered "A" form to be submitted in this case. The District Magistrate is head of the Police. Mr. Reily is

only head of the Police under him. It did not occur to Mr. Reily when Mr. Ezechiel ordered "A" form that it was desirable to remove Osman Ali from the charge of the Sadar Thana. He has heard that one of the witnesses attending Court in this case was arrested by a town constable named Isof Ali, but had not, when he gave his evidence, seen the first information in that case. Town constables are under the Sub-Inspector of the Sadar Thana.

With this evidence should be read that of the defence witness Kristo Chandra Bhadra, Head Constable of the Sadar Thana, given on the 21st January, five days after Mr. Reily had given the above evidence, and three days after Mr. Reily's examination had been concluded. Osman Ali says the witness is still in charge of the Sadar Thana. He has not been suspended. So far as the witness knows, no proceedings have been instituted against him by the superior Police authorities.

Magistrates and Sessions Judges may complain of Osman Ali but it matters naught, so long as he has his departmental superiors on his side—it is Magistrates and Sessions Judges who will come to grief, not he. So long as he keeps out of the witness-box I can't prosecute him, and he knows well enough that Government won't.

I now come to the nature and extent of the supervision exercised by his departmental superiors over Osman Ali during the month or more that the case was in his hands. The supervision exercised by the Inspector will be discussed when I come to deal with the Inspector's evidence. I confine myself here to the District Superintendent of Police.

Mr. Reily says that he went to the place on the morning of the 28th August to "test the enquiry" made by Osman Ali. All he actually did however was to examine complainant and his mother and "speak to" the village chowkidar. After the 28th all he did was to "supervise the enquiry from the office" "by seeing the diaries as they came in every day." The way he exercised this supervision was by passing written orders; there were three such orders.

The first, dated 29th August, is as follows:—

"The Sub-Inspector must make every endeavour to trace the accused."

The accused, be it noted, were not at that time ascertainable from the diaries. All the order means is that the Sub-Inspector must try to find out the murderers—a harmless order enough, but not a very useful one.

The second order, dated 31st August, is as follows:—

"The Sub-Inspector should have recorded their statement under Section 161."

By "their" Mr. Reily explains he meant the accused. As under Section 162 of the Criminal Procedure Code such a statement would not be evidence, this order also is not a very useful one.

The only other order Mr. Reily passed was on the 1st September. It runs "The Sub-Inspector does not seem to have questioned the accused as to the actual occurrence whether they were present. The Inspector must see that important points are made quite clear."

Much as I have condemned Osman Ali, I do not think he could reasonably have expected the accused to admit their presence at the murder or could reasonably have attached much (or any) importance to their denial.

So much for the supervision from the office. I now come to Exhibit 3 the petition which Mr. Ezechiel sent to Mr. Reily on the 6th September and which the latter returned the same day. It has already been quoted in *extenso*.

Against paragraph 4 where complainant said that some persons had disclosed that the suspected enemies of his father had actually caused his father's death. Mr. Reily has noted "Incorrect, no such evidence has been elicited."

In paragraph 5 Mr. Reily has underlined the name *Amjad Mia*, and has noted against it. "He is a *Panchayet* and went to the village with other *Panchayets* on being called by the Inspector. The statements mentioned here are all nonsense. I have visited the spot and tested the enquiry."

Against paragraph 6 he has noted, "The Inspector has been supervising the enquiry locally and has kept me informed daily of how the enquiry is proceeding. Up to date there is no direct or circumstantial evidence against the accused; in fact there is not an atom of evidence against anyone. The complainant may be directed to produce his witnesses before me whom he thinks will prove his case."

Now Mr. Reily admits that the only steps which he took to test the truth of Exhibit 3 were to look at the Police papers, and to question the Inspector and the Head Clerk. The only test he had made of the enquiry was that which he had made on the 28th August and which has already been discussed and he had not since then been to the spot. By his note "incorrect, no such evidence has been elicited," he merely meant that no such evidence was to be found in the papers which the Police put up before him. He denied the statements in paragraph 5 to which his attention was specially drawn by the District Magistrate, on the strength of what the Inspector and

the Head Clerk told him. The Head Clerk certainly and the Inspector *he thinks* told him that Osman Ali was not related to the accused—so far as he can recollect he did not ask Osman Ali himself upon the subject. His marginal note as to Amjad Mia was based on the statement of the Inspector.

This was when Mr. Reily was examined by the Court. When cross-examined by the Government pleader he said that he cannot say whether Amjad Mia is *panchayet* of the village of the deceased as he made no enquiry on the point. He then shuffled and said he may have made enquiries. He thinks he enquired from his Head Clerk. When pressed by the Government pleader he said that he cannot recollect that he made any enquiry as to the truth or falsehood of the allegation that Amjad Mia was a *panchayet* of the village.

It is very noteworthy that the Inspector Bharat Chandra Majumdar entirely fails to corroborate Mr. Reily's evidence about Exhibit 3. I think that probably Mr. Reily's evidence as to his consulting the Inspector is false and that he consulted no one but the Head Clerk. It may be that between his examination and his cross-examination Mr. Reily found that the Inspector was unwilling to lie on his behalf.

I do not think I am doing Mr. Reily an injustice in saying that what he did on Exhibit 3 was to pass on to the District Magistrate a series of falsehoods told him by his Head Clerk under his own signature and to add to them other lies of his own intended to make Mr. Ezechiel believe that he had carefully checked the investigation and gone into every thing himself, where as he had really done nothing of the kind but on the contrary had grossly neglected his duty.

Mr. Reily's suggestion that the complainant be directed to produce his witnesses before him (Mr. Reily) was obviously designed to prevent Mr. Ezechiel from "taking up the case from the hand of the police" as prayed by the complainant and "taking down the evidence by his worship's self or ordering due enquiry by a competent Court." And the result achieved was that the due enquiry by a competent Court was postponed for another one month and ten days.

The way in which Mr. Reily played into Osman Ali's hands with regard to his special Diaries and the summoning and examination of the witnesses has already been described. It is not necessary here to go into Mr. Reily's proceedings on the 14th and 15th September. Mr. Reily never went to the place after the 15th. He admits that he would not send up any report at all until Mr. Ezechiel ordered him to: that Mr. Ezechiel ordered him to send the other Inspector Mathur Babu down to the spot to arrest and *chalan* the accused, and that Mathur Babu actually did arrest some of them, but then, even, after they had been arrested, and in defiance of the Magistrate's orders he submitted C Form, and submitted it as already stated just as Mr. Ezechiel was going away. He also admits that during the period between 15th and 28th September, he talked over the case with Osman Ali and Bharat Babu and here again there is only Mr. Reily's evidence that Bharat Babu as well as Osman Ali was consulted. It is I think not unreasonable to suppose that Mr. Reily's delaying and his disobedience of Mr. Ezechiel's orders were due to Osman Ali's influence.

Of Bharat Babu's supervision suffice it to say here that on his own showing it was nominal. And it will be seen from the above that Osman Ali not only could but did twist Mr. Reily round his little finger.

It is due to Bharat Babu, who so far as I can see has not told any direct lie, though he has probably kept back a good deal that I should point out that in all probability he was powerless to check or control Osman Ali, and that if he had attempted to do so he would probably only have got himself into trouble.

It will thus be seen that Osman Ali, was in a first rate position for burking this case, if he had wished to do so; not only was no effective control in fact exercised over him but he had no reason to fear that any such control which he exercised—had on the contrary every reason to believe that whatever he did his superiors would back him up through thick and thin.

I now come to the motive which Osman Ali had for burking the case. This may of course have been a pecuniary one; but a more natural and obvious explanation is supplied by his relationship to the accused.

Osman Ali's maternal uncle (mamu) Ali Monjhi is paternal uncle (chacha) of the accused, Yakub Ali. Osman Ali's daughter is married to the son of the Amjad Mir already alluded to and the accused Sadak Ali is this Amjad Ali's maternal uncle. Abdul Halim the man discharged by the Committing Magistrate is Amjad Mir's nephew. Abdul Karim who though accused in this case is not on his trial, is Osman Ali's wife's uncle. Another accused Karim Baksh (the man who lives with Yakub Ali) has married the niece of Hamidulla, Amjad Ali's nephew. It will thus be seen that in one way or another Osman Ali Daroga was connected with no less than five of the persons implicated in this case.

Further, it is proved that this Amjad Mir was extraordinarily active during the police investigation, as also was his nephew Hamidullah. This Hamidulla is better known by his sobriquet: indeed the witnesses hardly ever call him by his real name. Many people perhaps wrongly attach considerable importance to the indication of character afforded by the nickname given to a person by those who know him best. As in a case reported by Montague Williams, a poor little innocent girl lost her rape

case against a great brutal man, because "they called her Cock Robin": as the head of the Local Government, among the Anglo-Indian community is universally known as Soapy John: so none of his neighbours ever call Hamidullah anything but Hamida Thaka, Hamid the rogue. "Slim Hamid" might serve as a Translation, but that denotes instead of connoting rascality.

Amjad Ali and Hamida Thaka, says Idris, were in his village the whole time the daroga was there. They do not live in his village. Amjad lives 2 or 2½ miles and Hamida one mile off. They were looking after the case on behalf of the accused. They would go to the houses of those latter and come back and whisper to Osman Ali.

Idris was cross-examined for nearly two days, but no attempt was made to impugn his testimony as to the part played by Amjad and Hamida Thaka.

Torab Ali deposes that he saw Amjad and Hamida before the Daroga when he was examined by the latter on the morning of the 28th August.

Ismail (Islam) goes further. He says that having received certain information he went to the Jagirdar's bari the morning after the occurrence, and was present when the body was taken out of the tank. As the Jemadar (Kristo Bhadra) was preparing the *surothal* (descriptive roll) of the corpse, he caught sight of Amjad and Hamida and beckoned them to come aside. They did so and he told them what he had seen the night before. They told him not to tell the Head Constable, but wait till the Daroga come and tell him. This witness also says that Amjad and Hamida were present when he deposed.

The defence pleader had not ventured to cross-examine Torab as to Amjad and Hamida, but he elicited from Ismail that three other persons named were present, when the body was taken out, and asked him why he told Amjad and Hamida instead of telling them. The witness replied that they were country fellows like himself, while Amjad and Hamida conduct cases and know about law.

It will be seen from the above that till the case for the prosecution was closed no serious attempt was made to dispute the fact that Amjad and Hamida were present at the police investigation and were looking after the defence.

The first witness for the defence was the Head Constable (Kristo Chandra Bhadra) who prepared the *surothal*. This witness admits that Hamida Thaka was present when the *surothal* was written; but denies that Amjad was there. He admits that Amjad was present *one day* during the investigation. He denies knowing of any relationship between Amjad and Hamida.

The *surothal* prepared by this witness has mysteriously disappeared. The witness says he made it over to Osman Ali on the night of the 27th August (why he kept it till then does not appear) and has not seen it since.

The prosecution allege that the *surothal* has been made away with because Amjad Mir's name was in it as a witness. The witness denies this, but his prevarication was more instructive than any admission and he will not swear that *no* Amjad Mir is down in it as a witness. Probably he is not without suspicion that the *surothal* may turn up yet.

The witness has committed gross perjury on other points and I have no hesitation in disbelieving his evidence as to Amjad Mir's absence and in preferring that of Ismail (Islam).

The defence have not attempted to deny the relationship between Amjad and Osman Ali. Amjad has, however, been examined for the defence and has denied that he is any relation either of the accused men or of Hamida, or that he looked after the case for the defence in the Lower Court. He says he only attended the police investigation on one day, when Bharat Babu was there, and that Bharat Babu sent for him.

The defence cited Bharat Babu, but did not examine him on this point.

This Amjad it appears, is a *panchayet*, not of Ismail Jagirdar's village, but of the neighbouring village of Solla. He admits he lives three miles from Ismail. There is nothing, but his own word to show that Bharat Babu ever sent for him, and perhaps he may have felt it would not be safe for him to deny his presence at a time when Bharat Babu was present.

Not only is Amjad's evidence at variance with that given by several witnesses for the prosecution, two at least of whom were not even cross-examined on the point, but the witness himself is obviously not a man on whom any reliance can be placed. He admits that he was a duftry in the Collectorate. He denies having been dismissed, but says he was suspended, and that after being suspended he never rejoined. He also admits that all his property has been sold in execution of a decree and that the decree has not been satisfied thereby. He admits that he heard of the occurrence before the Inspector's visit and knew that Osman Ali his daughter-in-law's father had gone to investigate, but he says that there was rain and storm and he was unwell and so did not go to the place.

Ali Manjhi a very old man has denied all connection not only with accused but with Osman Ali.

As to the relationship of Amjad Mir with the accused and of Ali Manjhi with both Osman Ali and the accused, the prosecution have not only examined Idris and Rajab Ali but have called two witnesses who are themselves relatives of Amjad and Ali Manjhi. The first of these is Abdul Latif (witness No. 13). This man is a khas mehal peon and is also a taluqdar. He says that Amjad Mir's mother was his own grand aunt. That Amjad calls Sadak Ali nephew and that the two men visit each other. Hamida, he says, is Amjad's brother's son. The witness says that he was present on two days of the police investigation and that he looked in twice during the evening, on his way home from office. Amjad and Hamida were present and looked after the case for the accused.

Amjad Mir, it should be remarked, denies even knowing this witness.

Witness No. 14, Ana Mir says that Ali Manjhi's mother was his aunt. So that he and Ali Manjhi are first cousins. Osman Ali's father, he says, was Ali Manjhi's cousin and Yakub Ali and Ali Manjhi are similarly related. Ali Manjhi's sister Mewa Bibi lives with Osman Ali and her husband Riajuddin died in Osman Ali's house.

Ali Manjhi denied even knowing this witness and says that so far from Ana Mir's aunt being his mother, Hira Mir and he are not related at all. Ali Manjhi however finds it convenient to forget what his own mother's name was or whether she had any brother. He admits however that Mewa Bibi is his sister, and that Riazuddin was her husband. He denies that Mewa Bibi is living at Osman Ali's but admits that Riazuddin is buried there.

I have no hesitation in disbelieving the evidence of Amjad Mir and of Ali Manjhi and in believing in spite of that evidence that Osman Ali is related through them to the accused and that Amjad Mir and his nephew Hamida Thaka managed the defence before him.

For the above reasons, I do not think there is any thing surprising in Osman Ali's failing to send up the accused nor does his omission to do so in any way shake my belief in the truth of the evidence as to the accused men's complicity now given by the prosecution witnesses.

The reason why Osman Ali does not himself venture into the witness-box is simple enough. It is contained in Section 477 of the Code of Criminal Procedure which empowers a Court of Sessions when perjury is committed before it to take up the case itself without any reference to the Magistrate or to Government.

Osman Ali knows better than to put his own head inside the lion's jaws. But still there had to be some evidence contradicting the evidence adduced by the prosecution that Hasan, Torab and Islam deposed before Osman Ali on the 28th August, and the Head Constable Kristo Chandra Bhadra, a subordinate of Osman Ali is accordingly put forward to give that evidence.

This witnesses' prevarication about Amjad Mir and the mysterious disappearance of his *surothal* have already been noticed.

He gave some palpably false evidence as to his finding a number of the accused present on the 27th August and a reference to his deposition will show how he prevaricated as to the District Superintendent of Police finding the bari of Sadak Ali and Aslam deserted on the following morning.

He says that he was with the Sub-Inspector for the whole of Tuesday the 28th August and that neither Hasan, Torab Ali nor Islam deposed before the Sub-Inspector on that day. He also says that he remained at the place for four or five days but that none of these three witnesses deposed on those days either.

In cross-examination the witness said that the Sub-Inspector did not depute him on any duty that day. He was that whole day and night at Ismail Jagirdar's bari, he did not go anywhere else.

He was then asked by the Government Pleader "is it not a fact, as stated by Osman Ali, that he deputed you that day to make enquiries and that you returned at 10 p.m. and told him that you had found out nothing?—*A.*: I do not remember it.

Q.: Can you swear that you did not go out of complainant's bari that 24 hours?—*A.*: I did not go beyond the village.

Q.: I am speaking of complainant's bari; can you swear you did not go out of that?—*A.*: I cannot say for certain.

The witness can however say for certain that during the whole day the Daroga did not examine the three witnesses, Torap Ali, Hosan Ali and Islam. He cannot say how many witnesses or what witnesses Osman Ali examined on that day. He did not know Hosan Ali or Torap Ali before (the witness says he knew Islam before but denies it was because Islam was a witness to the *surothal*). He first saw them in Court. He had never seen them till they came to Court to give evidence. He was sitting to the north side of the tamarind tree (a tree in Ismail's *doroja*, under which the witnesses say they deposed, a few yards from the cutchery ghur) when the Daroga took depositions, but how long he remained sitting there he cannot say. He cannot say on which side of the tamarind tree the Daroga was seated. He does not remember whether it

was in the morning or afternoon that the Daroga examined witnesses. Some time he was in the cutchery hut. He can't say at what time he was under the tamarind tree and at what time in the cutchery hut. Torab Ali, Hasan Ali and Islam were not there, he cannot say what other witnesses the Daroga examined.

In short, the witness cannot tell us anything else at all about the examination of witnesses by the Daroga on that day. The one thing he is absolutely positive about is that the Daroga did not examine any of these three men. Although the examination was more than four months ago and the witness admits that he never saw two of the three men in his life till a few days before giving his evidence

Comment on this evidence is, I think, superfluous. I cannot believe Kristo Chandra Bhadra and think he has committed gross perjury, not improbably he has received a heavy bribe for doing so. And in connection with the possible motive for his perjury I may mention a fact which is not of course evidence on the issue as to the guilt or innocence of the accused the fact that Osman Ali's cross-examination in Empress *versus* Mohesh Chandra Guha (the record of which I sent for while this case was going on) shows that he has amassed what for a man in his position may be called a considerable fortune.

It is worth while noting that no one, not even Head Constable Kristo Chundra Bhadra denies that Abdul Aziz and Rajab Ali gave evidence before Osman Ali incriminating the accused, nor has any evidence whatever been adduced to rebut the allegations of these two witnesses and of the three eye witnesses of the occurrence contained in Exhibit 4 and repeated on oath at the trial, that they were threatened by Osman Ali.

Next it is urged for the defence that Hosan Ali and Torap Ali in going from Bellew Sahib's Hat to their homes would have naturally taken not the route A. B. C. D. E. F. G. H. I. J. K. L. M. N. R. as described by them (*vide* Exhibit 5), which route took them to the east of Ismail Jagirdar's house but a shorter route. In the District Superintendent of Police's remarks on the C. Form, Exhibit Y7 (two shorter routes are suggested) (1) Guru Mir's road, (2) Ashak Jemadar's road. In the arguments, however, Guru Mir's road has practically been given up as it is proved by 5. Saroda Mohan Chakravarti (and we also saw for ourselves when we visited the spot) that this so-called road is a mere footpath, almost on the level of the fields, and it is admitted on all hands —except by defence witness No. 3 the Court Head Constable Mohim Chundra Mojumdar, who says that when the District Superintendent of Police visited the place on 15th September the *math* (cultivated land) was dry, that at the time of occurrence the height of the rains the whole country was under water.

The road which the District Superintendent of Police calls Ashuk Jemadar's road, and which it is suggested by the defence, the witnesses Hasan and Torab would naturally have taken when returning home from Bellew Sahib's Hat, is that indicated on the District Board plan Exhibit 5 as A. B. C. D. E. F. O. P. Q. R. It passes to the west—to the back of the houses of Ismail Jagirdar and of the accused Abdul Hakim. At Ismail Jagirdar's house it runs parallel or nearly so to the road I. T. by which the witnesses say they came. At that point it must be at least 300 yards from the eastern road (the distance F. G. is according to the District Engineer 870 feet). If, therefore, the witnesses had gone home this way, they would have seen or heard nothing of the occurrence.

The two roads have been measured by the District Engineer who says that the distance from F. to R. *viâ* G. H. I. J. K. L. M. N. is 6,670 feet (say a mile and a quarter) and the distance *viâ* O. P. Q. is 5,345 feet (say a mile). There is thus a difference of 1,325 feet or almost exactly a quarter of a mile in favor of the west road. And the defence urge (and persisted in urging even after we had been to the place, so desperate was their case) that Hasan and Torab would have taken this western road to save the quarter of a mile, and are not to be believed when they say on oath that they took the eastern one.

It is to my mind very significant that the defence pleader has not even cross-examined Hasan and Torab as to why they took the longer road in preference to the shorter one.

The reason why they did so is that they could not possibly have gone by the shorter road, as they would have been pulled up by a break 20 yards long with two feet of water and a deep into four feet of water on each side.

There was no mention of this break in Osman Ali's C. Form as in Mr. Reily, District Superintendent of Police's accompanying remarks nor is it shown in the Police map (Exhibit A) prepared under Mr. District Superintendent of Police Reily's signature for the identification of the District Magistrate.

Mr. District Superintendent of Police Reily says when cross-examined by the Government Pleader that he believes there is a break on Ashak Jemadar's road somewhere near the point where it joins Guna Mir's road—he believes it, that is all. He has been all over the road, but does not remember any other breaks. The length of the break he saw was about the length of the Bench Clerk's table (perhaps five feet) and its breadth would be about the breadth of the witness-box (say one foot nine inches). The witness made all these statements with the utmost assurance and sangfroid. The Government Pleader next asked him if he would undertake to swear that the length of that break was less than sixty feet. Oh, no, he couldn't do that.

The Assessors and I had a view of the place under Section 293 of the Criminal Procedure Code, on the application—which the Government Pleader ascribed to the grace of God—of the pleader for the accused. It has been laid down by the Madras High Court in Queen Empress *versus* Monikani (Indian Law Reports 19, Madras, 263) that an inspection of the *locus-in-quo* should only be made for the purpose of enabling the Magistrate to understand the better the evidence which is laid before him, and it must be strictly confined to that. This being so, I will confine myself here to saying that nothing in the case helped us so much as this local inspection to understand the extent to which Mr. District Superintendent of Police Reily had lied.

To revert to the evidence laid before us, the District Engineer and his Sub-Overseer both depose that there are three breaks along this road F to R (Ashak Jemadar's road). The District Engineer measured all three, his subordinate the biggest only. The breaks are all shown on Exhibit 5. The first, between O and P is 50 feet long by one foot deep, but there is an *ail* or raised part along the side. The second between P and Q is 20 feet long by nine inches deep. The third between Q and R is 60 feet long by two feet deep. The breadth, according to the Sub-Overseer is eight or nine feet, *i.e.*, the whole breadth of the road, no one asserts there was any side path and there are ditches on each side. There is a slight discrepancy between the District Engineer and his subordinate. The latter says that the breaks at the edges (ends) would not be more than nine inches below the level of the road: the District Engineer, that the minimum depth of the breaks would not differ from the maximum by more than three or six inches, he does not think it would be as much as nine inches. The break at Q to R according to him would thus at no part of its length be less than one foot six inches deep and in parts would be two feet deep.

The Sub-Overseer deposes that in the rains (and the occurrence took place at the height of the rains) the water in these parts is within six inches of the level of the road. It is also in evidence that at that season the surface of the breaks is muddy.

Hasan and Torab depose that at the time of occurrence the water in this break would have been waist deep. Witness No. 15, Hari Das Das, who lives just the other side of the break, deposes that when there is heavy rain the water is up to one's chest, and that in the rains there is never less than 2 or 2½ cubits of water. No one he says ever goes that way in the rainy season—people pass by the road which Hasan and Torab say they took.

With this should be read the evidence of the Court Head Constable Mohim Chundra Mojumdar, the man who prepared the Police map under the orders and "*in the presence*" of Mr. Reily. This witness says (I have no doubt it is all pure invention) there was much talk between the parties which road the witnesses would have gone, and the Sahib said "Let us see what will happen if we go by each road" so they went by the western road as well as the eastern. They went south along the western road till they came to a break, not far from the Ichakhali road. They did not go any further south because they were in uniform, and there was water in the break. They all, District Superintendent of Police, Bharat Babu, Osman Ali and himself went as far as the break and then went back again. In cross-examination the witness said that they got past some smaller breaks before coming to the south break; that in this south break there was mud and about 18 inches of water. He did not show the break because the District Superintendent of Police did not tell him to. He was then asked if he purposely omitted it. He replied in a shame-faced manner that he put down whatever the Sahib Bahadur told him to. The District Superintendent of Police did not tell him not to show the break. He was not bound, the witness says, to show the true state of things: he only put down what the District Superintendent ordered him to.

To the Court: The witness said that they all, Police Sahib, Bharat, he and Osman Ali came back from the break because there was a break and water in it and they would have got wet. It did not strike him, says the witness to note in the plan the reason why they could not go any further that way, nor did anyone tell him to. He cannot say why he showed both the roads east and west of Ismail's *bari*, he did it because he was told to.

Mohim says he was all along with District Superintendent of Police. They did not go along Gina Mir's road. He has shown it on his plan, but that is because he could see a certain way from each of the ends as he passed, and he made the two pieces next in his plan.

Mr. Reily says he can say *from his own knowledge* that Mohim's pen is correct. He went over all three roads—Guna Mir's and the other two—himself. He passed along the whole of Ashuk Jamadar's road. The water at the break was not deep, he sent some villagers in, and it was below their knees. He himself passed along on horse-back. (Apparently Mr. Reily thought that the break had high land and not ditches on each side of it.) The Inspector Bharat Babu, says Mr. Reily was with him when he went over these three roads on the 15th, as also were the witnesses Hosan and Torab.

The Inspector Bharat Baboo denies all this. On the 15th he says he came with Mr. Reily from Bellew Sahib's *hat* and they passed round the Kalabhanga *dighi* and came down the road which passes east of Ismail's house. On striking the north bank of the tank (at H) they went west along it and got to a place where two roads meet (presumably F). Bharat Babu says he remained standing there. The Sahib went south.

to see the break, but he did not go with him nor the whole time he was there—and he was there not only on the 14th and 15th September, but on six days before in August and the early part of September when he was "supervising" the investigation—did he ever go along the road where those breaks are—Ashak Jamedar's road. For all therefore that Bharat can tell us to the contrary, his superior's assertion that there is only one break about five feet long may be true, but his superior's assertion that Bharat was with him when he went over that road must be a mistake. And as to Torap and Hasan who also according to the D. S. P. were with him, Bharat does not know any such persons. Bharat does not know the witnesses for the prosecution, he has not seen who have deposed, so how can he say who they are?

Bharat Babu, be it remembered, is the second Police officer in this district even as Mr. Reily is the first. Which of them are we to believe?

I now come to the plan (Exhibit A) which Mr. Reily puts forward as a correct plan of the place of occurrence. It bears *in ink* his signature and the date 15/9. Mr. Reily swears he finished it on that date. He swears that he can say from his knowledge of the locality that it is correct.

Mr. Reily says that *after he finished the plan* he went and saw the District Magistrate Mr. Ezechiel (and showed him the plan. That may have been *two days after* (the 15th). There is no evidence as to the subsequent custody of Exhibit A but not improbably it may have remained with Mr. Ezechiel even then. Saroda Mohon Chakravarti, the District Board Sub-Overseer says he prepared Exhibit 5 under orders of the District Engineer on 18th November, and it must therefore have been on or before that date that Binod Babu (witness No. 6) got Mr. Ezechiel's order to prepare one. It is clear therefore that by 18th November at latest Mr. Ezechiel suspected the accuracy of Exhibit A, and it is not perhaps a very wide inference that from that time onwards he would see that Exhibit A was not tampered with.

Exhibit A is not drawn by Mr. Reily—there is nothing of his in it but the signature and date. Exhibit A was put in evidence by the defence pleader Baboo R. K. Aich. It was only when Mr. Reily was cross-examined by the Government Pleader that it transpired that Exhibit A was not an original but a copy—that there was a "rough map" in Mr. Reily's office and that he had signed Exhibit A without comparing it with the rough map prepared in the locale.

Mr. Reily was then asked to send for this rough map. Before it was shown to him he swore that he could say from his personal knowledge that the fair copy even though he had not compared it with the draft was correct.

The rough map is Exhibit Aa Mr. Reily admits that he had it in his hand two days before Tarak Babu examined him, *i.e.*, on the first day of his examination. He had therefore the opportunity of tampering with it.

And it is very significant that Bharat Babu who says in cross-examination that he saw the draft as it was made, declared even without taking it into his hand that he did not see Exhibit Aa—the plan Mr. Reily swears is the draft—and when pressed says that he cannot say for certain whether or not it is the draft.

I think most likely it *is* the draft but that Bharat Babu knows it has been added to and does not want to be asked about the additions.

Both Exhibit A and Exhibit Aa are the work of the Head Constable Mohim Chandra Majumdar. And as Exhibit A has nothing of Mr. Reily's but his signature and the date, so Exhibit Aa, has nothing of his but certain pencil marks shortly to be noticed.

Both the entries are "false documents" within the meaning of Section 464 of the Indian Penal Code for in each case Mr. Reily's intention when he made the entry was to make people (in the first case Mr. Ezechiel, in the second this Court) believe that the entry was made at a time at which he knew that it was not made. And as the documents purported to be made by a public servant in his official capacity Mr. Reily by making them appears to have committed offences under Section 466 of the Indian Penal Code and by using them as genuine to have committed offences under Section 471.

To take the date on Exhibit A Mr. Reily's diary for September 15th (Exhibit B 24) shows that he left the place of occurrence at 4 p.m. The last place Mr. Reily mentions in that diary is close to Ismail Jagirdar's house. The distance from Ismail Jagirdar's house to Sudharam is 3½ miles. When he left that place only Exhibit Aa (and probably only a part of that) had been prepared. Even assuming that Mr. Reily is a good rider and could gallop that 3½ miles still Mohim Chandra Majumdar the Head Constable and mapmaker was not mounted and would have to walk them. A mere glance at the plans will show that it would take Mohim Chandra Majumdar a good three or four hours to copy out Exhibit A. Mr. Reily no doubt says he did not compare Exhibit A with Exhibit Aa before signing, but there was really no occasion, if Mr. Reily were working honestly, for any special hurry and no reason why the Head Constable should bring the copy to him at nine or ten at night. The fact no doubt is that Mr. Reily has purposely antedated his signature because he did not want Mr. Ezechiel to know that Exhibit A *was* a copy—he wanted Mr. Ezechiel to believe that it was a plan made by himself on the 15th instead of being, as it really is, a copy made after the 15th of a plan made partly in, but in great part (and that the most important part) *out* of

Mr. Reily's presence on the 14th, 15th and possibly subsequent dates. Even in this Court it will be noted that Mr. Reily first claimed Exhibit A as being his own plan: and it was only by slow degrees that the truth was forced out of him.

It may be worth while noting as bearing on Mr. Reily's veracity although not as evidence in the case that it appears from Osman Ali's diary from 15th September (sheet 112 in the B file) that Mohim Chandra Majumdar, the Head Constable, remained at the place till 6 p.m. and then came back to the town with Bharat Babu and Osman Ali himself. No doubt the plan was being finished then. Mr. Reily was too lazy to do it himself, his complaisant subordinates said they would do it for him. Complaints had no doubt been made against Osman Ali but then as Mr. Reily wrote to Mr. Ezechiel they were "all nonsense."

I now come to the draft Exhibit Aa. Mohim Chandra Majumdar who made this draft says he did not show any break in it at all, that he was never told to and did not think it necessary to. But Mr. Reily points to two pencil marks at the place marked Exhibit Aa, and says he made these to indicate the break.

And so I have no doubt he did make them, but I have equally little doubt that he made them on the 16th January, 1901, and not on the 15th September, 1900.

Mr. Reily explains the absence of any such marks from Exhibit A by saying it might be an omission on the part of Mohim. But the far more obvious explanation is that Mr. Reily was unable to tamper with Exhibit A.

It must be remembered that on Mr. Reily's own showing, there was really no *need* to show this break, for it was an insignificant hole, five feet long by one foot nine inches broad in a road which according to Saroda Babu is eight foot broad, it was no particular depth and he himself had ridden by it. Unless a man stepped into it on a dark night it would not stop anyone going that road. You only had to go by the side of it. And indeed according to Mr. Reily no one even alleged they had been induced to take another road by the existence of this break for he has recorded in his diary of the 15th September, and so is obliged to swear in this Court that Hosan Ali and Torab Ali could not assign any reason why they went home by the longer route instead of by Guna Mir's road or Ashak Jemadar's road—although if he had really asked them there was no reason whatever why they should not have told him the very obvious facts which he would have seen for himself if he had gone to the places that by Guna Mir's road they would have been walking through water the whole way and that by Ashak Jemadar's road they would have been pulled up by this big break.

Before quitting Exhibit B 24 I should point out that it clearly represents that Mr. Reily "drew the plan" himself. The witnesses' evidence shows that this statement in his official diary is incorrect.

Neither of the police plans (Exhibits A and Aa) at all indicates the route by which the witnesses Hosan and Torab really came to the road east of Ismail Jagirdar's *bari* and as will be seen by a comparison of these plans either with the locale or with Exhibit 5 the parts of them in which Guna Mir's road and Ashak Jemadar's road are shown are all wrong. The only road shown to the east of Ashak Jemadar's road is that which passes round Kalabhanga *dighi* and which is a long way north and east of the route (B, C, D, E, F, G) actually followed by the witnesses.

In fact the only effect and probably the only object of these plans is to confuse one. In the original draft (Exhibit Aa) a lot more roads, even further east than the Kalabhanga *dighi* have been shown: why no one can say for there is no reference whatever to these roads in the evidence—they are not copied in Exhibit A perhaps because it was thought that there might be some limit to Mr. Ezechiel's credulity—that if the police took the witnesses too many miles out of their way he might smell a rat.

Before leaving the subject of these maps I must notice one very extraordinary statement of Mr. Reily's which furnishes the key to a great deal of his evidence. Exhibit 5 as I have already stated, was prepared by the District Board Sub-Overseer and much of it tested by the District Engineer and having been over nearly the whole place (and a great many parts not shown) with this plan in my hand I can say (and I am an old settlement officer and accustomed to plans) that it has been prepared with very creditable accuracy. But when the Government Pleader handed the witness this plan Mr. Reily, after puzzling over it for a long time, was obliged to confess that he could not make out anything from it at all.

The truth, no doubt, is that the only parts of the locality he ever went over personally are the road (much of it outside the limit of Exhibit 5) from Bellew Sahib's *hat* round the Kalabhanga *dighi* to Ismail Jagirdar's and the continuation of that road from Ismail Jagirdar's down to J or K when Mr. Reily would get on to the broad good road known as the Ishakhali road along which even a bad rider would have no difficulty in proceeding to Sudharam. He has probably been trying on the 16th January and possibly earlier to "get up" the locality from the police plans but they would only mystify him and of course his subordinates were not likely to tell him they were all false.

And the fact that Mr. Reily was riding—he passed along all these roads on horseback *vide* his cross-examination by the Government pleader—also seems to explain another remarkable incident, *viz.*, his going round the Kalabhanga *dighi*. Mr. Reily says he went that way because Hosan and Torab pointed it out to him as the road by

which they had come. Hosan and Torab deny this. There was really a reason why they should alter their statements if they even had told Mr. Reily they went that way, but there was also no possible reason why they should go that way in preference to the road they now say they took by A. B. C. D. E. F. G. which meets the road round Kalabhanga *dighi* at G, some distance above Ismail Jagirdar's house, and is very much shorter. Yes, the road round the *dighi* is, as Mr. Reily says, a circuitous route, most circuitous, and I can't understand why Hosan and Torap should have pointed it out to him, but I can very well understand why his subordinates, who have had time to learn his ways and his nature, should have taken him along it.

The reason is that between E. and F. there is a break in the shorter road caused by a *khal* (creek) running east and west and bridged by a *tal* (palm tree).

The district Sub-Overseer and district Engineer say that this break is 60 feet long. But from what I saw myself I should say this was an overestimate. The witness Hosan says it is 20 cubits (=30 feet) long. The truth lies between them.

At all events there the *khal* is with the palm tree over it. Now cultivators like Hosan and Torab would think nothing of crossing by this palm tree. I have gone over worse bridges myself, when on settlement work, but Mr. Reily is not an old settlement officer, and I doubt very much if he could cross that palm even on foot, and I am quite confident that the best rider in the world would never get a pony (unless it were a circus pony) across it. Mr. Reily, I may say, is blissfully unconscious of the very existence of this break (*vide* his evidence).

I have no doubt he followed blindly just where Osman Ali and Co. took him. But he won't say this, he prefers to lie: so as to make out that he did his work properly. And he has to lie on oath in my Court, because he has first lied not on oath to his departmental superiors.

Hosan and Torab say they neither pointed out the Kalabhanga *dighi* road to Mr. Reily, nor told him they had been by that route. They are black men, no doubt and ignorant peasants, and Mr. Reily is a white man and a highly paid officer of Government; but I have no hesitation in preferring their evidence to his nor does his perjury make me doubt the truth of their statements on this point or in consequence on other matters more directly bearing on the guilt or innocence of the accused.

As Mr. Reily made many statements by reference to his diaries the defence pleader very properly emphasized the fact that Mr. Reily's statement as to Hosan and Torab taking him round by the Kalabhanga *dighi* was not based upon his diaries and that he must have a clear and distinct recollection of it. But Mr. Reily *has* noted in Exhibit B 24 that "they" (Torab and Hosan Ali) "could not assign any reason why they took a round about road" and he has to invent this story about the Kalabhanga *dighi* road (or more probably has had it invented for him by Osman Ali) because if he had confined himself to the later portion of the witnesses' journey the explanation of their taking a round about road would be too palpable.

The next defence set up for the accused is that the other most important witnesses, Hosan, Torab and Islam made to Mr. Reily on the 12th September statements differing in certain respects from what they say now. In most cases the discrepancies are comparatively unimportant—in no case are they admitted by the witnesses who as to some things flatly deny having told the Police Sahib so and so, in other matters simply say they do not remember having told him so and so. Even if Mr. Reily were in a position to say positively that the men made to him the statement he has recorded (and he admits that without referring to his diary he cannot remember what they said) Mr. Reily has perjured himself so grossly on other points that I should not be disposed to believe him. But I think it sufficient to point out that Mr. Reily admits he does not thoroughly understand the dialect of Bengali spoken in this district and that parts of what he has written were translated to him by his Head Clerk: that he cannot say which parts were so translated, and cannot say with regard to any particular statement that it was not so translated, and that the Head Clerk who alone could say whether he translated correctly, has not been examined.

In disposing of Mr. Reily I have practically disposed of the defences, for Babu R. K. Aich's sheet anchor in the case was the supposed impossibility that a European District Superintendent of Police would lie and when that went the defence went. The headmaster, the zemindar and myself have shown by our finding that we think it quite possible that white policemen should lie—if I had been stationed all my service at Simla or Darjiling or the Assessors had been accustomed to a type of District Superintendent different from those who are sent to Noakhali perhaps we might have thought differently. However, as it is, I certainly think Mr. Reily a liar and I believe the assessors do too or they would not have found the accused men guilty of a capital offence.

The defence pleader has, however, made one really good point in favour of the accused or rather what looks at first a point in their favour. He urges that the Kalabhanga dighi when the witness Ahamadullah parted company from deceased, is only a mile or a mile and-a-half from Ismail's house; that it was at most two *gharis* after sunset when deceased turned off homewards then—and that he would have got to his house or to the place of occurrence by three *gharis* after sunset. If therefore he was waylaid then it would have been at about three *gharis* after sunset, but the witnesses turn the occurrence at six *gharis* after sunset a good hour later (Hosan Ali says four

or six *gharis* Torap Ali six *gharis* Islam about a prohar). And Baboo R. K. Aich has urged that Hosan and Torap at all events could not time their arrival earlier, for it was raining up till two *gharis* after sunset, and if they had said they had left Bellew Sahib's hat three or four *gharis* journey from Ismail's house, before the rain stopped no one would have believed them.

Now it would be easy to rejoin that the people of this country, especially of the cultivating class, are not very particular as to time and that even educated people might make a mistake between 8 and 9 p.m. But a far more probable explanation has been suggested by Baboo Tarak Chunder Guha, the Government Pleader. It is, of course, a hypothesis only: for as to what really happened to Ismail between the time when he left Ahmadullah and the time when his cry of *ma-go* was heard by Hasan and Torap there is only one man besides the accused who could have told us and that man is dead.

Babu Tarak Chunder Guha meets the defence pleader's objection by referring to the evidence of the Civil Medical Officer already alluded to. It will be remembered the deceased had a number of minor injuries, but that in particular "the top and right side of the head, the right half of the forehead and the right cheek were generally bruised, and that "on dissecting the scalp" the Doctor found "quantities of effused blood underneath on the top of the head, on the forehead, on both temples and on the right cheek *and also* near the skin *in front and on the sides of the neck.*" And the Doctor says the probability is that deceased was *struck on the head* by some hard blunt weapon or thrown down upon a hard surface (there was a large bruise to the back on the left of the spine) *and* that *his neck was also bruised.*

The Doctor has not said nor has any attempt been made to show that the blow on the head would be immediately fatal. The witnesses do not say that they saw Ismail waylaid or knocked on the head, but merely that they saw him carried along.

Babu Tarak Chunder Guha suggests that Ismail was first waylaid and knocked on the head at some place unknown. After felling him to the ground he would no doubt have been stunned and the accused in the dark would think him dead. Then the Government Pleader suggests, there must have been a consultation as to the disposal of the corpse and finally it must have been decided to throw the body into deceased's own tank, and perhaps, as was afterwards done, to try and get the death reported as an unnatural occurrence and not a murder. All this would take time. Tarak Babu suggests that as they were taking the supposed dead man towards the tank he may have revived and by crying out *ma-go* attracted the attention of Hasan and Torap. The men carrying him then took him into the dark part of the *daroja* and at the place where the Head Constable saw the knee prints and foot prints, flung him down upon the ground and throttled the life out of him. It was after this, when they were bringing up the corpse to fling it into the tank, that Ismail came along by the foot path and challenged them.

The theory is at all events a very plausible one and it is confirmed by the fact that Ismail's body was undoubtedly stripped and rifled before being thrown into the tank. This must have been before the three witnesses Hasan, Torap and Ismail saw it.

From this it will be seen that the very circumstance—the apparent discrepancy as to time which would at first seem to cast discredit upon the witnesses, becomes on closer examination the strongest possible testimony to their truth. For if there was a conspiracy the witnesses would certainly have made the time two or three *gharis* earlier.

One or two other minor arguments have been employed on behalf of the accused as to supposed improbabilities in the evidence, but the assessors have not been impressed by them, and I do not think it necessary to notice them in detail, especially as the judgment is already a very long one.

It is said the witnesses to the occurrence would have appeared before the Daroga on Monday. But Bengali cultivators are not anxious to give evidence in murder cases, and if the witnesses were false witnesses they might just as well have said they deposed before him on Monday instead of selecting a day — Tuesday — and a time 10 a.m. when the District Superintendent of Police had just been to the place (no doubt 10 or 10.30 a.m. in Mr. Reily's evidence is a lie intended to make out he stayed at the place longer than he had and to discredit the witnesses for the prosecution—*vide* the diary (Exhibit L 10) of Osman Ali himself and the evidence of Hosan Ali).

The defence have examined three witnesses to prove that on the date of occurrence the prosecution witnesses Islam and Rajab Ali were at Chur Pagla. One of these witnesses broke down in examination-in-chief and the defence pleader declined to question him further, the other two are obviously false witnesses as a perusal of their evidence will amply show, and the last of them Chand Mir seems to be not the witness originally summoned but another person substituted at the last moment. I think it sufficient to point out that although these witnesses were summoned months ago and the defence have had ample time to get up their case, not a question on this point was put in cross-examination to Islam when he was examined on the 12th January, and it was only on the 14th after several other witnesses had been examined that the defence pleader asked and obtained leave to recall and further cross-examine him about it. The inference (considering Babu R. K. Aich's position at the bar) is obvious that up to the 12th January it was not the case for the defence that Ismail had been at Chur

Pagla, that it was a late after-thought. No doubt the defence witnesses were originally meant to prove an *alibi*, not for the prosecution witnesses but for the accused. It was, however, felt that the ferryman's evidence about the anxiety of Sadak Ali and Aslam to cross over to Chur Pagla would rather spoil that story; so at the eleventh hour it was changed (just after the ferryman's examination) and an *alibi* for the witnesses set up instead.

It is said that the name of the fourth witness is Islam not Ismail, but that Idris named Ismail to Mr. Reily on the 9th September, and it is suggested Islam may have been substituted, and that the man first named was Ismail a near neighbour of deceased.

Idris says this neighbour is an enemy of his father's, and no attempt is made to contradict him. *Islam* is named in the list Idris gave in at the Police office the very day after he called on Mr. Reily, and it is not questioned that the fourth witness for the prosecution is the man who deposed before Mr. Reily on the 12th September. Idris even now calls him *Ismail*, the man himself gave his name as Ismail, though most of the witnesses call him Islam. The truth seems to be that Islam and Ismail are pretty well interchangeable. Of this there has been ample proof in the present trial. In the plan (Exhibit 5) in the Charge Sheet in the examination of the accused by the committing Magistrate and in many other plans the deceased man himself is called Islam and not Ismail. (With regard to the charge, *vide* Section 225 of the Code of Criminal Procedure and Illustration (*d*)—there is no suggestion that the accused have been misled.)

Then it is said that in Exhibit B 4 the third witness is called Hasan Ali (*a*) whereas his real name is Hosan Ali (*o*). But in the *hazira* or attendance list (Ex. B 7) filed two days later (12th September) Hasan Ali is shown, and there is no doubt that Hasan Ali (witness No. 2) was examined by Mr. Reily on that date.

There is really no room for the supposition that any of the witnesses would be substituted or tutored. What motive had anyone to come forward and give evidence on behalf of this poor boy against the all-powerful Osman Ali and his myrmidons among whom Mr. Reily himself must be included? The witnesses for the prosecution were indeed running the greatest possible risk, and this case makes us feel (and though a well-wisher of the people of India. I have sometimes been tempted to imitate Elijah the Tishbite) that there is hope for this country yet.

None of these witnesses—neither the eye-witnesses, the men whom they told just afterwards, the ferryman, the man who saw accused loitering on the road, or any of the subsidiary witnesses has any connection whatever with Idris or his father. Several of them did not even know Idris himself before this case. None of them has any quarrel with the accused. None of them has any grudge against the Police.

From the fact that they have not been cross-examined on the point it may reasonably be inferred that Hasan and Ismail (Islam) who say they are cultivators are at least substantial men of their class and that Tarup Ali is really as he says a *haoladar*, the owner of a petty tenure rather above the ordinary peasant proprietor.

The position of the ferryman has already been referred to. There is no reason for discrediting Rajab Ali or Abdul Aziz. And although Atar Ali is dead and was never examined by a Magistrate, there is no doubt that he was alive when named and that one Atar Ali was actually examined at the Police Office and joined in the petition to the District Magistrate.

As to the witness Islam it may be taken for certain that he *had* at the time a case pending in which Karim Baksh was a defence witness and which has since been compromised. So the story of his going that night to Karim Baksh's is at all events a plausible one.

As to the truth of the case as a whole, there can be no doubt. It remains to consider how far the charge is proved against individual accused.

Of the three eye-witnesses (as Hasan, Torap and Islam may not inappropriately be called) all identified two of the accused, Saduk Ali and Aslam; two, *viz.*, the two witnesses coming from Bellew Sahib's *hat* identify Anwar Ali, while Yakub Ali is identified only by the witness Islam.

Islam named Saduk Ali, Aslam and Yakub Ali to the witness Abdul Aziz (No. 7) immediately afterwards; still this does not remove the possibility of his being mistaken about Yakub Ali. He also says there was a fourth man who might have been Abdul Halim. In one respect this rather supports Islam's identification of Yakub Ali, for it shows he does not name people unless he thinks he really is sure of them, but it also shows that he was not able to make out *all* the four men satisfactorily.

Rajab Ali saw all four men loitering on the road. This may be proof of abetment of murder, but it does not show that Yakub Ali took part in the murder itself, and as his pleader very pointedly remarked that is all he has been charged with.

On the whole, considering the gravity of the charge, I think there is just about enough doubt as to Yakub Ali's participation in the actual murder to justify me in agreeing with the assessors. If it were anything but murder I would convict him. And I may point out that his acquittal on the present charge will be no bar to a fresh trial for abetment of murder, if the Crown considers that the evidence against him (and possibly against some other persons not now before me) justifies such a charge.

As to the identification of the other accused, I do not think there can be any doubt. The witnesses from Bellew Sahib's *hat* approached quite close to them, and with regard to two of the accused they are corroborated by Islam. Against all three of the accused there is the corroboration afforded by Rajab Ali's evidence, although, as already remarked, this does not prove participation in the actual murder.

The night was dark, in the sense that there was no moon, but it is proved beyond question that there was starlight, and also occasional flashes of lightning. As against Sadak Ali there is the further test of his voice; for he spoke to the witness Islam. Hasan and Torap could have had no doubt about the three men, for they named all three to Atar Ali immediately after.

I think therefore that the charge of murder is proved beyond reasonable doubt against all the accused other than No. 4, Yakub Ali.

With regard to the question of punishment, the crime was a cruel coldblooded murder without any redeeming circumstances, an old man being waylaid by a number of younger men and deliberately done to death. At the same time I do not think it necessary or expedient to pass the capital sentence on all of the men convicted. It is to my mind a sufficient justification for the course which I propose to take that I believe it will commend itself to the people of this country. A Judge in my opinion does a very poor service to the administration of justice if by unnecessary severity (or by severity which appears to them unnecessary), he deters juries or assessors from convicting and witnesses from giving evidence. Justice, and especially criminal justice, is not the preserve of officials or of a profession, but the concern of the people at large. Without their co-operation we are helpless. Mr. Ezechiel could have done nothing in this case but for the willingness of the people to come forward with their evidence, and my position in writing this judgment has been immensely strengthened by the fact that I have had both the assessors on my side.

It is most desirable to avoid exciting any sympathy with the guilty, especially with murderers. And if only for that reason, an over-lenient sentence is much to be preferred to an excessively severe one. If people say it is a pity the Judge did not hang all three of these men, that is after all what I want them to say.

Amongst these three men there can be no doubt who is the ringleader. Sadak Ali is not only the oldest, but he is much the biggest and strongest; a more forbidding looking ruffian I have seldom seen. None of the other accused had with the deceased such bitter and long-standing enmity as Sadak Ali had, and as already mentioned he had threatened to "do for" the deceased the very day before the murder.

Not only was it *a priori* likely that he would take the leading part in the murder, but the evidence shows pretty clearly that he actually did take it. It was he who threatened and drove off the witness Islam. It was he who woke up the ferryman. It was he who was seen near the mukhtear's the morning after the occurrence.

As to Aslam and Anwar Ali, I am willing to believe that their part in the murder was a subsidiary one and that their guilt is not of so deep a dye. The only alternative punishment which the law allows is after all a very severe one.

I now turn to the conduct during this trial of the Police of the Chief Civil Officer of this District, and of the Government of Bengal. And the matters on which I now proceed to touch are matters of far graver consequence to the community than the issue directly before me of the guilt or innocence of the four accused. The punishment of Ismail Jagirdar's murderers will not bring Ismail Jagirdar to life; but if that is all that this case brings about, I fear that a great many more of the King's subjects are likely to be murdered. I bring to the notice of the High Court, and I may add of the public, also, certain facts which I think it desirable they should not overlook. For the failure to punish an individual murderer is no doubt a bad thing, but it cannot occasionally be helped—the things which I am now about to mention can be helped; and I hope the public will look to it that they are helped. I can conceive of nothing of greater moment to the public than that their own servants, charged with the protection of their lives and properties, should, when they betray their trust, screen murderers and asperse the chastity of their victim's wives, receive the punishment which they deserve: that witnesses attending a Court of Justice to give evidence in a murder trial should be protected from molestation; or that a Judge, especially when trying men for their lives, should not be liable to be intimidated by executive authority.

With the exception of the Inspector Bharat Chandra Majumdar, all the Police witnesses from Mr. Reily downwards appear to me to have committed gross perjury.

With regard to the Native Police Officers, however, I think it unnecessary and inexpedient to enlarge further upon their offences for the law gives me, if I am not interfered with, the power of applying the appropriate remedy myself. When the remedy is in his own hands, a Judge is not justified in making a clamour. And my Lord Coke says it was an aphorism continually in the mouth of a great sage of the law, "Blessed be not the complaining tongue, but blessed be the amending hand."

I come now to Bharat Chandra Majumdar, the Inspector. As I have already remarked, there is no statement of this witness of which I can feel confident that it was intentionally false. It is also to be recognized that he was placed in a position when telling the truth, may well be counted to him for righteousness—that he was exposed

to peculiar temptations to lie. But although I am glad that he has not by committing perjury in my Court aggravated his previous misconduct, I am compelled to draw attention to that misconduct in order that the public may force their servants, the executive authorities, to take due notice of it.

Mr. Reily says that on the 27th August he passed orders, on the First Information Report, to Bharat Babu to supervise the enquiry. The order in question is on Exhibit 25 A. For some reason which has not transpired, Bharat Babu did not, however, go out to the place which as already stated is 3 to 3½ miles from Noakhali till the 30th August; three days after the order was passed and two days after Mr. Reily himself first visited the spot.

Bharat Babu says that he supervised the investigation on the 30th and 31st August, and the 1st, 2nd, 3rd and 5th September. He came back every evening to his lodging at Sudharam (Noakhali).

Bharat Babu's own account of what he did is not very clear. He kept no diary but a personal one which has not been produced. He can't remember whether or not he ever saw the *surathal*. He questioned many people, he says, but he does not remember who they were or what they said—he kept no record of it. He does not know the witnesses Hasan, Torap and Islam, not even now. The one definite statement he makes as to his proceedings during these six days is that he went one day, a market day, to Peshkar's *hat*, which as he says is close to the place of occurrence, and made enquiries of the people there.

As Bharat Babu himself can tell us so little of what he did, let us turn to what the witnesses say.

Idris, the complainant says when cross-examined, "Bharat Babu, the Inspector, came to our village—how many days after Osman Ali I cannot say. I saw the Inspector fishing two or three days in the tank of Abdul Hakim accused. I cannot say how many days he was in the village. The Inspector Bharat Babu one day asked me who I was, and some one said I was the murdered man's son, that is all Bharat Babu ever asked me. I don't remember seeing Bharat Babu in our village more than two or three days. Bharat Babu did not make any investigation."

As already stated Idris petitioned the Magistrate by Exhibit 3 (dated the 5th and filed the 6th September) "that the Inspector of Police sometimes went to the village at the time of the investigation, but the purpose and effect of his going there was best known to him."

Hosan Ali and Torab Ali were not asked anything about Bharat Babu Ismail (Islam) was. He says (in cross-examination) "I do not know Bharat Babu. I did not tell the District Superintendent of Police of this threat of the Daroga's (to run a bamboo up him)—but I spoke about it to a stout gentleman, who used to fish in the tank of accused (Bharat Babu is stout) "I also told that stout Babu about the occurrence. I don't remember whether I spoke to him on that Thursday (when, the witness says, Osman Ali threatened him) or afterwards but I remember speaking to him at the *daroja* of one of Ismail's tenants who lives to the west where the Babu was fishing."

Abdul Aziz (No. 7) who says he deposed before Osman Ali at Peshkar's *hat* on a market day, stated that he does not know Inspector Bharat Babu, and that when he deposed before the Daroga, he did not see any Government officers present except constables.

Rajab Ali, who also deposed before Osman Ali at Peshkar's *hat* on a market day does not remember the Inspector's being present on that day.

As already stated, Bharat Babu says he never during the whole time he was at the place went over the road to the west of Ismail Jagirdar's house, and yet the supposed probability that Hosan and Torab would go by that road in preference to the one they said they took is made the foremost reason in the final Police Report for discrediting the case against the accused.

When I was a little boy, I had to learn from a book called "Butler's Spelling Book." One of the things in this was "equivalents" English, Latin and Greek. I remember one of these ran.

English.	Latin.	Greek.
Overlooker.	Supervisor.	Bishop.

In this case I do not see what Bharat Babu's supervising amounted to, but I think there can be no question that he overlooked a good deal. And I am constrained to say that the Police Force in this District is in a very bad way, and that we want at Noakhali an Inspector who will overlook a little less and supervise a great deal more.

I now turn to the case of the greatest offender Mr. Reily, the District Superintendent of Police. Mr. Reily is a European British subject and although that does not debar me from trying him myself I am unable under Section 449, Criminal Procedure

Code to pass upon him if convicted a sentence of more than one year's imprisonment. I consider such a sentence to be entirely inadequate to Mr. Reily's offences and both on that account and because I think it desirable for many reasons that the case should be tried by the highest Court in the country, I intend after completing the proceedings preliminary to commitment, to commit Mr. Reily if I still consider there are sufficient grounds for doing so, to the High Court for trial.

I now come to the conduct of the local executive officers during the trial. And I wish first to draw attention to Exhibit X 22, a letter I received from Mr. Cargill on the afternoon of the 31st January while writing this judgment, and to my reply a copy of which is Exhibit X 3. This letter of Mr. Cargill's may of course be private and I have no doubt it was not intended for publication but I cannot but think it unfortunate that he did not wait till my judgment was delivered before writing to me, for it looks to me very much like an attempt to get up a private quarrel with me by way of discounting anything I may say about him in this judgment. As he has written this letter I think it advisable to say that apart from this case I have no animus whatever against Mr. Cargill—no more animus than I had against the executive officers whose misconduct I thought it my duty to notice in the Chupra case.

The trial commenced on the 7th January. It began by the Government pleader applying for warrants against several of the witnesses for the prosecution. On this I recorded the following order.

"It seems that by some negligence the witnesses were not bound down to attend this Court as directed by law. The Government pleader says that the Court Sub-Inspector states that he took no recognizances because he was not ordered to do so. He is a senior officer and should have brought this matter to the notice of the committing Magistrate if an order were required. Let a copy of this order be sent to the District Magistrate with the request that due notice may be taken for the failure to take recognizances. It is the more necessary that I should bring the matter to his notice as the conduct of several of the superior Police officers seem to be very much in issue in this case."

The Court Sub-Inspector I may mention is the immediate superior of the map maker, the Court Head Constable Mohim Chundra Majumdar. It seems to me fully obvious that the Police were determined that if the witnesses did not care to attend from a disinterested regard for justice, no legal compulsion should be allowed to influence them.

My order of the 7th January was duly communicated to Mr. Cargill on the following day, but if he has taken any notice whatever of the failure to take recognizances, he has not informed me of it. Any action he would take against the Court Sub-Inspector would necessarily be taken through the District Superintendent of Police. But Mr. Reily when examined on the 16th, nine days later, says that he does not remember the failure to take recognizances having been brought to his notice. It seems therefore a fairly safe conclusion that Mr. Cargill has neither taken any notice of my order of the 7th ultimo, nor intends to take any.

It appears from Mr. Cargill's letter (Exhibit X 22), and also from Mr. Reily's evidence that on Wednesday the 9th January Mr. Bignell, the Deputy Inspector-General, Police, came to Noakhali for his annual inspection of the Police Office, and that Mr. Cargill went away the same day. It also appears from Mr. Reily's evidence (I had to send an urgent telegram after him to Feni) that on the 15th Mr. Reily accompanied Mr. Bignell to Feni on the latter's departure from the district.

Now it is useless for Mr. Cargill to say he does not know that the Police Office in Noakhali is in a very bad state. *Nescire quod omnes sciunt* is a time-honoured executive device, but if Mr. Cargill were ignorant of the state of affairs before he went on furlough, Mr. Ezechiel has had plenty of opportunity to enlighten him since his return.

And I cannot help saying that it must have been a very strong motive which took Mr. Cargill away from Noakhali just at that particular time—a motive which was sufficient, not only to counteract his desire to confer with Mr. Bignell on the state of the local Police, but to induce him to leave the Police in uncontrolled possession of the station during the trial of a case in which, as I had informed Mr. Cargill officially, the conduct of their superior officers was very much in question.

And although Mr. Cargill's parsimony might account for some of the facts, it by no means explains all. It would have cost Mr. Cargill nothing to take action against the Court Sub-Inspector or to remove Osman Ali from the charge of the Sudder Thana which is in his hands even now and of which he has made use during the trial to impede the course of justice—it would have cost him nothing except a few words to keep Mr. Reily in order during the trial of the case.

The real fact of the matter is that Mr. Cargill would have been very pleased to have this case break down. A fact which has not come out in the evidence, but which is known to me, as it is known to everyone in Noakhali, is that Osman Ali has been at least as much Mr. Cargill's favourite as Mr. Reily's and that it is to Mr. Cargill's favour even more than to Mr. Reily's that Osman Ali has owed his position as uncrowned King of the district—a position which he might be holding even now, but for the fortunate accident of Mr. Cargill's having taken furlough and Mr. Ezechiel having come here to act for him. And this I may say explains if any explanation is required.

the anxiety of the Police to delay the case if they could only have kept it back till Mr. Ezechiel was out of the way its suppression was reasonably certain.

I do not mean to suggest that Mr. Cargill would have wilfully burked the case. But men are prone not to believe what they do not wish to believe and Mr. Cargill did not wish to believe that this case was true. He told me himself the very night before I began trying it that he should be very much surprised if it stood.

And I am led to mention these matters because it is my conviction that if Mr. Cargill is left here as District Magistrate the difficulty of putting things right will be increased indefinitely. This is the first of three sessions cases committed in Mr. Ezechiel's time in which the Police sent up C Form and Mr. Ezecheil who was here the other day as a witness tells me that one at least of the others is as sensational as this. I have not of course gone into these cases, but think the opinion of the late District Magistrate—who committed one of the cases himself—entitled to provisional respect. As for cases other than Sessions cases the state of the district is sufficiently disclosed by the Government Pleader's cross-examination of Mr. Reily.

The irony of the situation will be appreciated when I point out that Mr. Cargill is the nominal prosecutor in these cases. It is the Crown which says that Osman Ali has burked this case, it is the Crown which declined to call Mr. Reily as not being a witness of truth (and rightly so. I at first had a higher opinion of this officer, I thought that he might have been incompetent and careless but he would at least speak the truth and that I ought not to leave it to the defence to call him but I am bound to admit that Government was right and I was wrong). Mr. Cargill and the Lieutenant-Governor ought in theory to be anxious that these accused men should be convicted, that Osman Ali should be dismissed and that the evidence which Mr. Reily gives on behalf of the defence should be disbelieved. But yet Osman Ali is kept on in charge of the thana within which I am now living. Mr. Reily is still in charge of the district and when I show an intention of prosecuting him for giving evidence which the Crown alleges to be false, the Lieutenant-Governor endeavours to intimidate me!

The very day after Mr. Cargill left the station just after the examination of the eye-witnesses had begun—Islam or Ismail, perhaps in some respects the most important of these witnesses certainly the one who had given most trouble to Osman Ali and Co., was haled off from the Court to Osman Ali's thana by Osman Ali's men on a false charge. After finishing giving his evidence two days later the man complained to me in open Court, and I sent him to my senior subordinate Judicial officer with the paper marked 22 in B file. Babu Lolit Kumar Bose's report is paper 19, etc., in the same file. I extract the following. "Ismail has substantially proved his allegation about arrest, about rough treatment by the constable who arrested him and about his being taken to thana. He has further proved that the town constable Isaf Ali arrested him with full knowledge that he was witness in Sessions case and was in charge of constable Aliwar Choubey when he attended call of nature. . . . The arrest of Ismail could not have been *bonâ fide.*"

When these things happen the Chief Civil Officer of the district is absent "in islands" out of reach of post or telegraph. And the person to whom I have to appeal to keep the European District Superintendent of Police within bounds is a native Deputy Magistrate who if he has not really "trembled with awe" at the District Superintendent of Police's frown has probably found it policy to pretend to do so!

I received Babu Lolit Kumar Bose's report on the 15th. The same day the Government Pleader informed me that the witness Ramdhun Barua, whom he next wished to call, had been sent away to Commilla with the D. I. G. and on my sending for Mr. Reily to enquire about this (and also because failing Ramdhun Barua he was the next witness for examination) I discovered that he also had left the station.

I sent an urgent telegram after him to come back himself and bring Ramdhun Barua but had perforce to stop work for the day.

Ramdhun Barua was examined the next day. From his evidence it appears that it was an exaggeration of the Government Pleader's to say he had been sent to Comilla: that he was really sent only to Horis Chandra Bhuya (a place on the Feni Road ten miles out). Mr. Reily when examined disclaimed responsibility for this deputation. The man himself says that Osman Ali sent him and that Osman Ali persisted in ordering him to go though he represented he had to attend this Court. Mr. Reily at first affected ignorance of even the approximate number of constables in Noakhali but had at last to say that there were 35.

As to his own absence Mr. Reily admits that not only did he receive a summons citing him as a witness for the defence but that he paid me an official visit on the morning of the 9th January and that I then told him that I intended to call him myself after the witnesses for the prosecution were examined and that he must not leave the station. His only excuse is that he thought he would get back before he was wanted.

I regret to have to say that Mr. Reily has since done some similar "thinking" until at last I have had to take from him a personal recognizance of Rs. 500.

I mention these and similar pinpricks on the part of the Police and the executive authorities because I am inclined to believe that the object of them is not so much to affect the course of the trial—they only cause a little delay as to irritate me and cause

me to use strong language. It is all very well, gentlemen, but it won't work. I had all these tricks played upon me in the Chapra case by Messrs. Maddox, Bradley and Twidell. The only difference that case has made is that I did not mention these tricks then and that I do mention them now.

Mr. Reily was examined on the 16th, 17th and 18th January and the translation of his evidence and the examination of the accused occupied the 19th. On the 20th (Sunday) we had a view of the place of occurrence. That view and the evidence given by the Police witnesses on the following day (20th January) removed from my mind any lingering doubt that Mr. Reily had committed perjury and from the morning of the 22nd January I insisted on his being present throughout the proceedings.

The examination of the witnesses for the defence was completed on the 22nd January. The 23rd January being a closed holiday on account of the Id the case was adjourned for arguments till the 24th.

On the 29th January Babu R. K. Aich addressed the Court and the Assessors for the defence, Mr. Reily being present. As Babu R. K. Aich began laying down the proposition that it could not be thought for a moment that a European of Mr. Reily's position would deviate from the truth I interrupted him and said that Mr. Reily's evidence would have to be weighed in the same manner and scrutinized by the same tests as that of any other witness and that I could by no means accept the theory that because a man had a white face he was incapable of telling a lie.

A letter posted at Noakhali up to 4 p.m. on the 24th would reach Calcutta in the evening of the 25th and would be delivered in the early morning of the 26th.

Babu R. K. Aich closed his arguments on the afternoon of the 24th and the case was then adjourned till the 25th for the arguments of the Government Pleader. As it was the Hindu festival of Sri Panchami on which date Hindus are not allowed to touch pen or do any work after *puja* the trial was held in the early morning and the arguments had finished and the opinions of the Assessors been recorded by 9.30 a.m.

On that morning the Government Pleader exposed with a boldness as creditable as it was rare the tissue of perjuries committed by Mr. Reily who was sitting close beside him. It was with regret, said the Government Pleader, that he said these things but it was his duty to say them and he must do his duty.

The Assessors both found three out of the four accused guilty of murder, and thus by implication, the District Superintendent guilty of perjury: for if Mr. Reily has spoken truth, the conviction cannot be sustained; and if the evidence is good enough to hang Sadak Ali, it is good enough to send Mr. Reily to jail.

The significance of the Assessors' opinion should not be overlooked. They are both Hindus of the classes known as *Bhodralok*, and the reluctance of men of those classes to find accused persons guilty in capital cases is well known: it was put forward a few years ago by the executive authorities as a main ground for abolishing trial by jury. Under the circumstances I am not perhaps going too far in saying that the fact of the two assessors' finding three of the accused guilty in a case when the only possible doubt was whether the Judge would hang *all* the persons convicted shows that these gentlemen must have thought the evidence very strong indeed..

The Assessors gave their opinions shortly before 9.30 a.m.

There is telegraphic communication between Calcutta and Noakhali and also between Calcutta and other places accessible from Noakhali in a few hours.

On the 26th January Mr. Buckland, the Officiating Chief Secretary to the Bengal Government, sent me the demi-official letter marked as Exhibit X 18. The post mark on the envelope in which it came (Exhibit X 19) shows that this letter was posted at Wellesley Street, Calcutta, at or before 1.45 p.m. Wellesley Street is, I believe, the Post Office to which letters from the United Service Club at which Mr. Buckland not only lives but does his work are taken. The time shows that the letter must have been posted between 12.45 and 1.45 p.m.

I shall revert to this letter (which I received on the 28th January) hereafter. In the meantime I refer to certain subsequent proceedings of the *local* executive authorities; whether or not directed from Calcutta, I am not in a position to say. All I can say is that the same mail which brought me Exhibit X 18 may have brought instructions to Mr. Cargill from his executive superiors.

At all events, that very day, the 28th January, Mrs. Cargill began the correspondence with my sister which culminated in Exhibit X 22 and I cannot help suspecting that her husband set her up to do it.

On the 29th January Mr. Cargill sent me officially the letter which is sheet 51 in B file asking if he could take copies of papers as soon as judgment was delivered. Such precipitance on the part of District Magistrates is at all events unusual.

My reply (No. 44 of 30th January) is sheet 53 in B file. It expressly informs Mr. Cargill that he cannot have copies until sometime after judgment is delivered.

On the 30th January I read out my order No. 18 in open Court in Mr. Reily's presence and hearing. On the 1st February I similarly read out my order No. 20. Mr. Reily and Mr. Cargill live in the same house (the circuit house) and their officers

are within a few feet of each other. On the afternoon of the 1st February I received from Mr. Cargill the letter which is sheet 54 in B file. Paper 56 in B file is my reply.

Although Mr. Cargill is the prosecutor in this case I do not believe that he is afraid the accused will get off, or that it is any such fear which makes him impatient at the slow course of justice, I am rather inclined to the opinion that he is desirous that I should use hasty expressions in this judgment.

On the 4th February I read out in Mr. Reily's presence the order No. 21 postponing delivery of judgment till the 7th. Part of my order runs "let the District Magistrate be informed that I desire that any application he may wish to make to me with reference to this case or to his proceedings during the trial may be made to me through the Government Pleader in open Court." This order was duly communicated to Mr. Cargill.

Two hours after I received from Mr. Reily the letter which is paper 67 in B file. It purports to be sent through Mr. Cargill and though it does not bear his endorsement I cannot help suspecting that it was sent with his knowledge.

The effrontery of that letter coming from a man who must have known that he was about to be prosecuted for perjury, needs no comment. But I suspect the letter was sent under orders, possibly under orders from someone outside this District.

On receiving this letter I sent to Mr. Cargill the letter which is paper 58 of B file.

On the 7th February the next date fixed for delivery of judgment I took from Mr. Reily (who as the order-sheet shows was not in attendance and only came after considerable delay) a personal recognizance of Rs. 500.

Within the last half hour (12th February, 1901) while writing these remarks I have received from Mr. Cargill the letter marked Exhibit X 24 in the envelope Exhibit X 25. It will be seen that both letter and envelope are official and that Mr. Cargill affects to write on behalf of Government. I cannot help wondering what damages the Secretary of State for India in Council would recover in a suit against my grass-cuts for the Government grass which Mr. Cargill alleges they have taken!

From Mr. Cargill and his Government grass I turn to some more important matters. *Paulo majora canamus.*

I have already referred to a letter (Exhibit X 18) from Mr. Buckland, the Officiating Chief Secretary to the Government of Bengal, which I received on 28th January.

I thought over the matter and determined to leave Sir John Woodburn as few loopholes as possible. Accordingly on the 29th January I wired the Chief Secretary as follows:—"Please wire whether your demi-official of 26th was written by order of Government." This telegram was sent State ordinary to Chief Secretary at Calcutta from Sessions Judge at Noakhali.

I received no reply (and indeed expected none). I therefore on the 31st January filed the affidavit of my Peshkar that he had despatched it (paper 15 in B file) and sent the Chief Secretary the following urgent State telegram: "Please wire whether you have received my telegram of 29th concerning your demi-official of 26th.

These telegrams seem to me innocent enough but apparently Sir John Woodburn does not like to answer them, or it may be that Mr. Buckland declined to answer them as directed.

The letter and the telegrams together (or indeed the letter in itself) make it necessary for me to go back a considerable period and to refer to the case of Empress *versus* Narsingh Singh commonly known as the Chapra case.

And I would begin, by soliciting a reference to Exhibit X 26 a demi-official letter from the Chief Secretary dated 1st January, 1901, promising me three months' privilege leave in or about the early part of May. Under the new leave rules, which have come out while I am writing this judgment, I should be allowed and indeed encouraged to add to this privilege leave a certain amount of furlough of which I have 18 months at my credit, and this would carry me on to a time by which Sir John Woodburn must retire. From Exhibit X 27 (demi-official letter from Mr. Bourdillon, Chief Secretary, dated 3rd September, 1900), it will be seen that I have also been promised a transfer to a healthy District. And, although this latter promise is to say the least, a variation of one held out to me in Exhibit X 28 (demi-official letter from the Private Secretary to the Lieutenant-Governor, dated the 12th June, 1900) yet the implied admission that Noakhali is not a healthy District is a distinct advance upon the Lieutenant-Governor's inability to admit "that it is in any sense an undesirable one." And the real truth of the matter is that every day I am kept here makes the position of the executive authorities more untenable and that they would be heartily glad to see me out of Noakhali in any manner consistent with saving their own face. Why I was not transferred in October was, I believe, because it was desired to keep the native papers quiet and avoid inconvenient questions in Council during the cold weather; in fact, I am kept here as a hostage for the silence of the native community.

If, therefore, I bring up the matters to which I now advert, it is not because it is to my personal interest to do so. I only have to refrain from prosecuting Mr. Reily to write a judgment in the style of a Government resolution and everything will be made

smooth for me. I shall get my privilege leave, get my furlough, and when I come back I shall be posted to a healthy District. As it is, if I am not dismissed it will certainly not be for want of will on the part of those with whom my dismissal nominally rests.

I think it very necessary, however, not merely to prosecute Mr. Reily, but to expose Sir John Woodburn which I now proceed to do.

On 7th October, 1899, I delivered judgment in the appeal of Narsingh Singh and acquitted the appellant, a man who had been convicted under Sections $\frac{352}{114}$ and 504 of the Indian Penal Code, by Moulvi Zakir Hosain, Deputy Magistrate of Chapra, and sentenced to two months' rigorous imprisonment. The conclusions to which I came were, briefly, that Mr. Corbett, Assistant Superintendent of Police, and Mr. Simkins, District Engineer, had set upon and severely thrashed the appellant for refusing to obey the illegal orders of Mr. Twidell, the Collector-Magistrate, and had afterwards unlawfully compelled him to labour on a bund (embankment), that fearing that he would bring a case against them, Mr. Corbett arrested Narsingh in the Chapra Hospital and carried him off to Mr. Bradley, the District Superintendent, that Mr. Bradley tried to intimidate him into resigning a Government post which he held elsewhere (and so admitting himself to have been in the wrong), that on this failing, the two Police officers took him to Mr. Twidell, the Collector Magistrate, who sent him to *hajat* (lock-up), that a false case was then brought against him by Mr. Corbett; that a mock trial was held before a native Deputy Magistrate of 27 years' standing; that even this man's seared conscience revolted at the task before him, and that he tried to get Mr. Twidell to allow him to let the man off; but Mr. Twidell proving obdurate, he finally gave way and convicted and sentenced the man as described, at the same time dismissing "as utterly groundless" the case of assault and unlawful compulsory labour which Narsingh had brought against the two European officers, and the crucial facts of which the latter had to admit on oath when cross-examined in his Court.

Under Section 417 of the Criminal Procedure Code and Schedule II., Article 157 of the Limitation Act XV. of 1877, it was open to the Local Government to appeal against my judgment at any time within six months from the 7th October, 1899. No such appeal was ever presented, nor has any serious attempt ever been made to question the correctness of any of the findings of fact contained in the judgment.

There was the less reason why the Local Government should have hesitated to appeal to the High Court, as two of the Judges composing that Court have and had, for reasons entirely unconnected with the case, a strong personal animosity against myself. These two Judges are Messrs. Rampini and Stevens. The grudge which Mr. Justice Rampini has against me is that stated in my second letter of 31st December to the Chief Secretary (of which Exhibit X 14 is a copy), of which Sir John Woodburn thought to make the fulcrum to turn me from prosecuting Mr. Reily. The grudge Mr. Justice Stevens has against me is well known to the High Court, but is not so well known to the general public—whose servant I am and for whom this judgment is written. It is that in an official letter No. 1112, dated the 21st August, 1899, to the address of the Registrar, which letter I insisted should be laid before the English Committee of five Judges, I made the fact that Mr. Justice Stevens desired a particular Government appointment for his son in the Police a ground for my objecting to his deciding a certain personal matter in which my interests conflicted with those of the Executive authorities who had the gift of that appointment in their hands.

The Executive authorities, from the Lieutenant-Governor downwards, did everything in their power to prevent the true facts of Empress *versus* Narsing Singh from coming to light. The Commissioner of Patna, Mr. Bourdillon, C.S.I., who, it was well known was about to be made the Chief Secretary, the man to whom a Sessions Judge has to write for leave to go to Calcutta to meet his sister, wrote to me demi-officially to hush up the case; and before this demi-official letter was sent me, the Legal Remembrancer had, as Sir John Woodburn, K.C.S.I., himself admitted to me on 10th December, been consulted with a view to prevent the appearance before me of the guilty officials from whom alone the extraordinary illegalities which took place during the trial could be elicited. (In this country the only people who will come forward to give evidence against officials in a case of this kind are those who do not mind their houses being burnt, their crops looted, their relatives turned out of Government employ, and themselves and the members of their families dragged up on false charges and sent to jail. Small wonder that Lord Curzon and his advisers object to their officials being "put on oath to criminate themselves." It is the only way they can be criminated at all. And it is Lord Curzon, not the High Court, which calls my action in this matter an abuse of the liberty of enquiry; the High Court were wanted to say that but refused. The penultimate paragraph of Lord Curzon's Resolution is as artistically worded as the last paragraph of Mr. Reily's report).

While writing my judgment in the Chapra case I had received from Mr. Bolton, the then Chief Secretary of the Government of Bengal (in reply to a telegram of my own), a telegram informing me that, on relief by Mr. Anderson, I was to stay on at Chapra as Additional Judge. In due course a notification to that effect, dated 9th October (1289 A. D?) appeared in the "Calcutta Gazette" of the 11th October.

By the mail of the same day (9th October) a copy of my judgment was forwarded by me to the Chief Secretary to Local Government. In the ordinary course it would have reached him at Darjeeling on the 14th or 15th October. On the 16th October the

Chief Secretary wired to me that I was appointed to be Judge of Noakhali, and that a Mr. Fisher (then Deputy Commissioner of a non-regulation District) was to relieve me as Additional Judge.

On the 20th January, 1900, the Lieutenant-Governor was asked the following question in the Bengal Legislative Council by the Honourable Babu Surendro Nath Banerjee: —

"Whether there is any foundation for the statement which has been made that Mr. Pennell has been transferred owing to his judgment in the Chapra case. If not, will the Government be pleased to state the circumstances of the transfer?"

In reply the Honourable Mr. Bolton said "Mr. Pennell was transferred in the course of official changes, and the order appointing him to Noakhali was passed before the Government saw his judgment."

I am indebted to a gentleman of considerable standing in the mercantile world at home who has recently been staying with me for the criticism that " that reply is what we call a commercial statement. It's when you are asked an inconvenient question and don't like to tell the other man a direct lie, but want to put him off."

It no doubt may be and probably is true that Sir John Woodburn himself had not seen my judgment on the 16th October. But I have also no doubt that his Chief Secretary had not only seen it but had acquainted him with its purport.

Not only was Government aware of the case before the judgment was pronounced, not only was there ample time for the copy of the judgment sent from my office to have reached the Chief Secretary, but I am also able to prove that the Local Executive officials showed the same feverish anxiety to get copies which Mr. Cargill has shown in the present case. The pencil writing at the head of Exhibit X 29 is Mr. Twidell's: it shows that he wanted a copy of the judgment before 3 p.m. on the 8th October. Three p.m. is the hour when the Chapra mail for Patna, Calcutta and Darjeeling is closed. Exhibit X 30 is a later letter on that same day from Mr. Twidell himself. "He understands," says Mr. Twidell, that "judgment was given yesterday, and he should be glad to know what difficulty there is in the way of his having a copy." The 8th October, I may add, was a Sunday. I can carry the matter a little further. Mr. W. C. Macpherson, the permanent Collector—Magistrate of Sarun (Chapra) who arrived at Bombay on the 10th October, told me and indeed seemed to make it a grievance against me that he found a telegram awaiting him from Mr. Bourdillon, the Commissioner of Patna, directing him to come on to Chapra at once, whereby he lost several days' holiday which he had intended taking. The Commissioner of Patna, the Chief Secretary elect, was, it is evident, very much alive to the situation even on the 10th October and I find it difficult to believe that he did not acquaint his *pro tem.* master with it before the 16th.

Further, it appears from the letter which I received from Mr. Huda that he got intimation of his transfer from Noakhali at the same time as my appointment then appeared in the Gazette, and Mr. Fisher, the Deputy Commissioner of the Santhal Parganas, was equally taken by surprise. From his letter dated 20th October from Naya Dumka (Exhibit X 31) it further appears that "Bolton" had written to him to proceed to Chapra as soon as possible."

Although Mr. Bolton was so anxious that I should be relieved at Chapra, he did not for some time further show any particular anxiety that I should quit that place, and under the Regulations I was entitled to nearly a fortnight's joining time even after making over charge. It would seem indeed that, although the Government had made up their mind before seeing my judgment to send me to Noakhali they did not make up their mind for some time after what to do with Mr. Huda, who was already Judge there.

I have indeed little doubt that at this time Government imagined that they could bury the scandal (which be it borne in mind was not in Bengal, but in the most remote district of Behar) without any difficulty. I no doubt had to be punished for my insolence in disturbing them, but no further notice need be taken of the case.

On the 26th October, however, my judgment appeared *in extenso* in the "Amrita Bazar Patrika," one of the most powerful organs of native opinion in the country and from that date to use an expressive colloquialism the fat was in the fire. The "Amrita Bazar Patrika" of 26th October would, in the ordinary course, reach Darjeeling in the afternoon of the 27th. On the 28th Mr. Bolton sent me a telegram to "join early at Noakhali on being relieved" and followed it up by a demi-official letter (Exhibit X 32) of the same date. It will be seen that Mr. Bolton himself created the necessity to which he refers for my proceeding early to Noakhali.

The reasons for this urgency were, I believe, two; first, that Mr. Bolton (or his master) was apprehensive of what I might do in Calcutta on my way through; secondly, that they feared that after public attention had been drawn to the matter it might be difficult for Mr. Macpherson to delay much longer taking action on the complaint of Narsingh *versus* Corbett and Simkins, in which I had directed him on 7th October to make further enquiry.

By arrangement with Mr. Anderson, I managed to stay on some days at Chapra even after Mr. Fisher's arrival and did not make over charge and leave the place till

the afternoon of 3rd November. No sooner was my back turned than Mr. Macpherson summoned not Messrs. Corbett and Simkins, but Narsingh Singh, and having subjected him to a lengthy cross-examination, again dismissed his complaint (on the 7th November) on the ground that " granting that Messrs. Corbett and Simkins were not warranted in beating the complainant or in forcing him or attempting to force him to work against his will, I consider it inexpedient in this case, considering all the circumstances that they should be made to stand a trial in a Criminal Court for what they did.

In an earlier part of his order Mr. Macpherson states that " It appears clear to me that the two accused persons, who are public servants, acted in the belief that it was their duty to do all that could be done, to effect the repair of the embankment, and that due and sufficient notice can be taken by their departmental superiors of actions on their part which should not have been taken."

It does not appear, however, that Mr. Macpherson took any steps to secure that due and sufficient notice or any notice at all should be taken of the matter by the Departmental superiors of the officers involved. It was well known to Mr. Macpherson, that one of them Mr. Simkins was the servant not of Government but of the District Board of Saran, a body mainly composed of indigo planters. Mr. Macpherson is himself the brother (and I believe the son) of an indigo planter, and must have been well aware of the sort of notice a body composed of such men would be likely to take of Mr. Simkins' conduct. So far as I know, the only action which Mr. Simkins' departmental superiors have taken against him is to raise his pay. In the meantime what had the authorities been doing?

The Bengal Government must have got my judgment on the 14th or 15th October. They have never even alleged that they took any action upon it then or for long after. No sooner had he published the judgment than Babu Mati Lal Ghose, the veteran patriot who edits the " Amrita Bazar Patrika," sent a copy of it to Mr. W. R. Lawrence, the Private Secretary to the Viceroy. Copies were sent by that mail (though the executive authorities knew nothing of it) to many influential people in England.

For nearly a month Mr. Lawrence (or his master) did not find it convenient to acknowledge Babu Mati Lal Ghose's letter. (They have acknowledged and acted on many of his letters before.) It may be nothing but a coincidence, but about the same time as the copies sent by Babu Mati Lal Ghose would be received by their addressees in England, Lord Curzon suddenly woke up to the necessity both of taking action and of acknowledging Babu Mati Lal Ghose's letter. So on the 20th November, 1899, a letter No. 1651—never yet published—was sent to the Government of Bengal, and about the same date Mr. Lawrence sent Babu Mati Lal Ghose a reply, stating that " His Excellency's attention had already been drawn to the case," and thanking him for his letter.

I must however take upon myself to correct a statement of Lord Curzon's (he has had his resolution sent to me, so I suppose—of course from a judicial officer's point of view it is so much waste paper he expects me to notice it—in paragraph 6. It is there stated that as soon as Mr. Pennell's judgment was brought to the notice of the Government of India, they requested the Bengal Government to furnish them with a full report upon the case." This is not so: Lord Curzon took action about such time as his attention would have been drawn to the case *from England* but not till nearly a month after his attention was drawn to it *from India.*

Sir John Woodburn at all events was not yet prepared to despair. Shortly before the end of November it was intimated to Babu Mati Lal Ghose by Mr. Bolton that newspaper agitation would do me harm, and that the whole matter of my transfer was under consideration. Babu Mati Lal Ghose consulted Mr. P. L. Roy, the eminent counsel who was looking after my interests in the matter, and on his advice stopped for a time writing about the subject. He reproduced in his paper, at that time the purport of the semi official communique. Then followed (not, I will ever believe, without previous conference with Lord Curzon) the descent of Sir John Woodburn upon Noakhali. The pretext for this was I believe the improvement of the jail: it is a strange fact that the decision arrived at was that the jail did not require improving. It deserves note that this was the second time in history that " your very beautiful but somewhat secluded station " (His Honour's speech in Durbar) has been honoured by the Lieutenant-Governor's presence.

In the early morning of the 10th December, Sir John Woodburn, K.C.S.I., Lieutenant-Governor of Bengal, with his Chief Secretary, the Honourable C. W. Bolton, C.S.I., his Commissioner, Mr. Collier, and his Private Secretary, Major J. Strachey, arrived at Noakhali. All other durbaris including my senior Munsiff, Babu Lalit Kumar Bose, having been sent away, I was sent for into a private room apart from witnesses, and then the Lieutenant-Governor had with me the interview which I now describe.

It should be noted that I had not sought this interview or any other interview with Sir John Woodburn. Indeed I had been advised by Mr. P. L. Roy not to broach the subject of my transfer or to allude to it in the most distant manner, but to treat the Lieutenant-Governor and his followers as if nothing had happened. From the Circuit House, where Sir John Woodburn delivered himself, I walked direct to my Court where he was shortly expected, and then and there wrote down on a piece of paper and with a pencil with which I had provided myself beforehand notes of his conversation.

Those notes are Exhibit X 33. They necessarily do not contain everything: by the mail of the same day I sent a detailed description of the interview to Mr. P. L. Roy in Calcutta and from his letter dated 17th December, I gather that he received my letter in due course of post.

So far as I remember, the only important omission in the notes (which will be found in the letter) is Sir John Woodburn's statement that the Chapra case was a trumpery case. This was made when I took him aback by shewing him that I knew that he himself had tried to hush up the case. Sir John Woodburn began by asking me whether Mr. Bolton had spoken to me about my transfer. I said no, Mr. Bolton had said nothing to me upon the subject. Sir John Woodburn then said, "you will be glad to hear that *I had not read* your judgment when I passed the order for your transfer." He then went on, "Having said that I will tell you that reading your judgment I have grave doubts whether you are fit for judicial employment. The Judicial Officers are my officers just as much as the executive officers and I want them to do well. Mind: I am speaking for your benefit and for your guidance. Reading your judgment leads me to doubt whether you are really so impartial as you should have been. The vindictive rancour with which you pursued the Policeman and the District Officer makes me think you must have had some quarrel with them."

On this I interrupted His Honour and asked whether these Officers themselves alleged that I had any quarrel with them. Sir John Woodburn rejoined "I have not seen the Policeman or the District Officer *and have received no communication from them.* I can only say that reading your judgment as a perfectly impartial man I have doubts as to your impartiality."

On this I retorted that other people took different views of my judgment—that a friend of mine, to whom I had shown it just after delivering it, had told me that a judgment like that was worth two National Congresses.

Sir John Woodburn replied that I must admit that a friend was hardly the best person to pass an opinion on my judgment, that he was a perfectly impartial man and that I must admit he was in a better position to form a proper judgment.

I rejoined that I doubted if he were really as impartial as he said that as head of the Executive he would naturally not like it to be believed that his Executive Officers had done wrong, and that I knew his Government had done all they could to prevent the truth coming out.

On this Sir John lost his temper and said "My government! Be careful Pennell, you had better be careful what you are saying!"

I said "Well at all events I know this much, that you consulted the Legal Remembrancer as to whether the witnesses would appear before me and it was only when Handley told you of course they must that you gave way."

Sir John replied in great heat "Yes, and I had every right to consult the Legal Remembrancer. It was a trumpery case and you were calling witnesses from all over the Province."

I replied that except Corbett all the witnesses were in Chapra and that an Assistant District Superintendent of Police did not matter.

Sir John then showed signs of a desire to rise and cut short the interview. He said that he had a great deal to do. I stood in front of him and said "What you have been saying to me sounds very much like a threat. Have I your permission, if I be so advised, to represent the matter to the High Court"?

Sir John replied emphatically, "No I am not going to enter into a discussion with the High Court. It is my business to say where my officers can be most usefully employed. The Judicial Officers are my officers and not those of the High Court. I am speaking to you privately."

I rejoined that as a Judicial Officer I was bound to follow my own opinion and not his as to the way in which I dealt with cases. He rejoined "Well, at all events, Pennell, you must admit that your judgment was very long. If you had simply acquitted the man and not commented on the Executive Officers, no one would have minded." I replied that my judgment was full of facts and that there was very little comment in it. On this Sir John Woodburn said "Any other Judge but you would have disposed of the case in two pages" and with these words left me and passed on into the room where his followers were awaiting him.

During the time this conversation was going on Mr. Collier, the Commissioner, was, if I am not mistaken patrolling the circuit house, on the other side. This may have been and very likely was a mere coincidence, but it may also have been by preconcerted arrangement to prevent any outsiders from overhearing the conversation.

Sir John Woodburn departed and shortly after his return to Calcutta Babu Mati Lal Ghose was ordered by Mr. Bolton to publish a demi-official communiqué to the effect that my transfer to Noakhali had been decided long before the Chapra case. When the lying has to be done for them "Government" do not stop short at "commercial statements."

What I have never been able to understand is why that communiqué was not sent to Babu Mati Lal Ghose for publication before instead of after Sir John Woodburn's visit to Noakhali.

The explanation which I suggest to the High Court and to the public whose servant I am is as follows:—

That the Governments of India and Bengal had not up to this date, two months after my judgment, taken any action in the case, or at all events had not taken any steps which they could not retrace. That Sir John Woodburn persuaded Lord Curzon to let him try one last shot at hushing up the matter—no doubt he could have very truly assured the Viceroy that he had assisted at the hushing up of worse things in the North-West (I have no doubt from *his* point of view *it was* a trumpery case). That it was hoped by intimidating me to silence the native press, or more probably that if I had shown any disposition to give way, terms would have been made and I should have been given a good District as the consideration for the native papers dropping the whole matter.

It is noteworthy that up to the 10th December Sir John Woodburn had not received any explanation from Mr. Corbett (I suppose he was meant by the Policeman) or Mr. Twidell, and I suggest that up to that date he had not called for any, though it appears from the Government Resolution that by the 2nd January, 1900, Mr. Twidell's explanation as well as Maulvi Lakir Hossain's had been received and considered.

The orders of the Government of Bengal were not passed till the 2nd January, 1900, the day after the holidays, and when it must have been clear to "Government" that I did not intend to avail myself of the opportunity afforded by the Christmas holidays of making any overtures to them.

I would invite the High Court's special attention to Exhibit X 28 (the letter from the Private Secretary dated the 12th June). It seems to me relevant to point out that between the time when my letter of 21st May would have reached Darjeeling and the 12th June there was time for a reference to Simla.

With regard to certain statements in that letter as to admissions of my own it is not perhaps really important what I have admitted or not admitted. The important thing is not my conduct but that of Government. But I think in justice to myself, I may be permitted to point out that my letter (which should be in the Lieutenant-Governor's hands) was an autograph one and does not contain the admissions set forth in Major Strachey's letter. If I have really admitted that I decide cases partially, why do they keep me on as a Judge? I do not believe that they pay me £2,000 a year because they are fond of me.

The explanation which I suggest of Exhibit X 28 is that the Executive authorities thought that they had got me down and imagined that it would be not only safe but profitable to insult me.

The statement in Exhibit X 28 that the Lieutenant-Governor told me in December that my appointment to Noakhali was arranged long before he ever heard of the Chapra case is false, and the explanation which follows is, I believe, equally false. My appointment to a lighter charge would not necessitate my removal from Chapra; the appointment of Additional Judge *was* a lighter charge. If I had done anything which merited punishment it is certain that no consideration for my feelings would have led the Lieutenant-Governor to suppress the cause of my appointment to Noakhali when questions were asked about it in Council. If my appointment to Noakhali had been arranged long before Messrs. Huda and Fisher would have been informed. But the real reason why the Lieutenant-Governor could not put forward publicly in January the lie which he has put forward demi-officially in June is that Mr. Justice Ghose would have been prepared to contradict him.

It is perfectly well known to the Chief Justice and other Judges of the High Court that a heated discussion was held by the English Committee on receipt of my letter No. 1112, dated the 21st August, 1889, and that Mr. Justice Rampini (whom I had then also objected to as an arbitrator) proposed that recommendation should be made to Government for my reduction. He was, however, overruled by the Chief Justice and Messrs. Ghose, Hill and Wilkins, who held the opinion that, although I had been less economical of the truth in my letter than decorum required, it would suffice to tell me that I must not do it again. And that sentiment was accordingly conveyed to me in the Registrar's letter No. 2424, dated 7th September, 1899.

There were several reasons why the High Court would not at that time have consented to my appointment to Noakhali. First and foremost was the state of my health, which I had prominently brought before them. It was known to the High Court even then, although Sir John Woodburn did not discover it for a year afterwards, that Noakhali was an unhealthy district; and I had submitted to them not only the certificate which Dr. Ash gave me when I applied for medical leave at Mymensingh (Exhibit X 34), but also two later certificates from the Civil Surgeons of Champaran and Saran (the latter the Captain Maddox who figured in the Chapra case and against whom I am said to have had animus). These certificates Exhibits X 35 and X 36 represent me not as an idler, but as a man struggling hard to do his work against ill-health, and attending Court contrary to the advice of his medical attendants.

But indeed Sir John Woodburn himself does not say I was sent to Noakhali as a punishment, it was only because I had to be appointed to a lighter charge. I represented to Sir John Woodburn in October last that the work at Noakhali was really heavy, as there was no Subordinate Judge and every other District had one: he said that he was sorry I had found the work heavy: he has not however taken any steps to make it lighter. This much however is certain, that an additional Judge will now be required here for at least six months and thereafter a permanent Subordinate Judge.

Exhibit X 37 is a demi-official letter, dated 5th October, from Mr. Bourdillon. It states that the Lieutenant-Governor has definitely decided to give me no assistance in effecting an exchange (what I asked for was not an exchange, but a transfer) to another Province.

It refers to an interview which I had with Sir John Woodburn on 2nd October. I took advantage of Mr. Bourdillon's confirmation as Chief Secretary to ask him (on 29th September) to help me to get a transfer. Mr. Bourdillon showed what seemed to me a genuine willingness to assist me and said he would speak to Sir John Woodburn about it. And I arranged with Mr. Bourdillon to call on Sir John Woodburn on the 2nd October. As Sir John Woodburn raised objections, I avowed to him that the real reason why I wanted to get a transfer was that I did not wish to serve under a man who believed that I was not impartial and had threatened to dismiss me. On this Sir John Woodburn said that he remembered very well what I meant, and that he had spoken as he had because he had had a very bad report about me from Burma, and really did not know how to employ me.

Now I left Burma at the end of 1894 (to be precise on 1st January, 1895), whether I then did good or evil seems to me apart from the point: whatever reports the Bengal Government had before them in December, 1899, they had before them in February, 1895, when they appointed me a Sessions Judge in September, 1897, when they appointed me to the charge of the most important sessions division in those provinces. And it seems to me clear that whatever the executive authorities may now say as to my misdeeds in Burma, what they really object to is not my having done wrong then but my doing right now.

From Sir John Woodburn I went to Mr. Bourdillon and told him of my failure and asked him to renew his efforts. This I did for two reasons: first, because Mr. Bourdillon had tried to put the transfer on the ground of my health, and get me a better climate (the North-Western Provinces or Central Provinces) but secondly and mainly, because I could not feel sure even of him and wanted something in writing. Why I really wanted a transfer was that once I was out of Sir John Woodburn's clutches, I would have been in a better position for laying my grievances before the Secretary of State (and ultimately before Parliament) and I may say that I have always regarded the public aspect of this matter as a great deal more important that the private one and have resolved that whatever might happen to myself, Sir John Woodburn should not go unpunished, if I could help it, for his impudent attempt to intimidate an English Judge.

This ends the history of the Chapra case, so far as I am concerned: but I also think it my duty to lay before the High Court in their judicial capacity certain parts connected with that case, which they have hitherto in their extra-judicial capacity "supervised."

Narsingh Singh's complaint against Messrs. Corbett and Simkins, the truth of which is admitted by those persons themselves, was illegally dismissed by Mr. Macpherson. Mr. Macpherson has been since appointed to officiate as a Commissioner.

Mr. Corbett was nominally punished with the stoppage of his promotion for one year. No sooner were the Government orders issued that he was transferred from the undesirable station of Backergunge to Ranchi, which is well known as a sanitarium and he has remained there ever since. Further, the last civil list shows that he has been put back over the heads of all the Police officers of his year, with the exception of Mr. Justice Stevens' son, who were confirmed before him.

"An expression of the Lieutenant-Governor's severe displeasure" was conveyed to Mr. Bradley whose conduct in the opinion of the Governor-General in Council "amounted to little short of persecution and was a flagrant abuse of the authority with which as a Police officer he was entrusted." Between the first and the second of these verbal castigations Mr. Bradley was appointed to officiate as District Superintendent of Police of Muzafferpur, the prize district of Bengal, in succession to a very senior officer who is Mr. Bourdillon's brother-in-law and there Mr. Bradley has remained up to date. A good many of us would rather like this sort of punishment.

Mr. Bourdillon has been first appointed to officiate and has since been confirmed as Chief Secretary to the Bengal Government.

I was refused leave last year though in bad health. Messrs. Twidell and Zakir Hosain were granted leave on full pay (though so far as I know in good health) and were allowed to join it to the Puja vacation, an extraordinary concession, not admissible to Judges even of the High Court.

Mr. Bolton has been promoted to a seat upon the Board of Revenue.

Sir John Woodburn is still the Lieutenant-Governor of Bengal and I am still the Judge of Noakhali.

Mr. Twidell and Maulvie Zakir Hosain are still administering injustice at Chapra, with powers to try men summarily and inflict three months' rigorous imprisonment without any appeal. Babu Jagannath Sahay, the pleader who championed Narsingh Singh, has had to remove his practice elsewhere.

These matters will show the High Court and the public the good or bad faith of the executive authorities of the Government of Bengal and of the Government of India.

They will also show—and this is their relevance here—the meaning and point of Exhibit X 18, for they show what the independence of the judiciary in India really amounts to.

The mills of God grind slowly but they grind exceeding small, and I cannot but regard it as a very special dispensation of His Providence that the action of the executive authorities in this case has enabled me to represent these matters in such a manner that the High Court cannot avoid, even if it wished, taking judicial notice of them.

With regard to Mr. Twidell and to Moulvi Zakir Hosain I would point out that the case of in *re* Ganesh Narayan Sallu (Indian Law Reports, 13, Bombay, 425) shows that the High Court has power to secure the removal of dishonest Magistrates. The High Court in that case abstained from compelling the Bombay Government to do its duty, only because the needful compulsion had already been applied by the Secretary of State.

As for Sir John Woodburn's treatment of me, I confront the High Court with this dilemma—either I am not telling the truth, in which case I am not fit to try the King's subjects for their lives, or I am telling the truth, in which case Sir John Woodburn is not fit to be employed in the King's service.

I now come to Exhibit X 18 which as I have said was sent to me as soon as Sir John Woodburn got to know that I was likely to prosecute Mr. Reily.

Section 477, sub-section (1) of the Code of Criminal Procedure runs as follows:—

"Subject to the provisions of Section 444, a Court of Session may charge a person for any offence referred to in Section 195 and committed before it brought under its notice in the course of a judicial proceeding and may commit or admit to bail and try such person upon its own charge."

The Code says *may*; not that I *shall* prosecute Mr. Reily for his perjury and forgery but that I *may* do so.

But "may" as the Legislative Councils have found has a way of meaning "must" in such cases. The discretion which I have to exercise is not an arbitrary but a judicial discretion. In deciding whether or not I should prosecute Mr. Reily, I ought not to allow myself to be influenced by such considerations as his being, or having been, a personal friend of mine: or that the Local Government will be pleased with me if I let the matter drop—"supervise" Mr. Reily's crimes or that it will be the worse for me personally if I don't let it drop. The only thing I have to look at is not "prestige" not "policy," but whether or not the prosecution is expedient in the interests of justice. And this is a question which admits of but one answer.

What the Government want is that I shall allow my judicial discretion to be guided by their executive will. I decline to do anything of the sort. If I had asked, as Sir John Woodburn anticipated, that my imputation upon Mr. Rampini should be withdrawn, I should have had to wait for the Government answer just as I am now waiting for the Government answer to my telegrams. Sir John wished me to write my judgment and to decide about Mr. Reily with the "imputation" hanging over my head.

But I am no more afraid of Mr. Justice Rampini than I am of the Lieutenant-Governor. Mr. Rampini has long been stabbing me in the back and I am glad to get an opportunity of meeting him face to face. I may be doing him an injustice, but a gentleman very much like him ran away from me at Tollygunge on the afternoon of the 1st January last.

What I have to say about the imputation is that it is true. I give a few facts. Mr. Rampini and his friends can have more if they please.

Early in 1898 Mr. F. S. Hamilton, C.S., who was my Additional Judge at Mymensingh, sought my advice with reference to a tea syndicate in which he told me he had already lost over £1,000. The principal papers relating to this Syndicate had been printed and he laid them before me.

It appeared that about the time of the tea boom an enterprising individual named Sawyer—now I believe removed to a wider sphere of activity—thought to relieve the British public of some of its superfluous cash by floating a rotten tea company. With this object he formed a Syndicate. Some of the members contributed experience. I think that was all Mr. Sawyer brought into hotchpotch, some names, Mr. David Yule gave land and other members (among whom was my unfortunate friend) provided money. Further (and this was the worst of all) the syndicaters bound themselves jointly and severally to go on contributing rateably *ad infinitum* as a majority of the syndicate might decide, which was a little hard upon those members who had to contribute money and not experience, especially as the voting was not confined to them and in practice the control was out of their hands.

I forget the name of the Syndicate, but the agents were Messrs. Andrew Yule and Co., and among the members were Messrs. David Yule, C. de C. Richards, E. S. Sawyer (none of these gave money), F. S. Hamilton, a Dr. Murray (I believe the gentleman who has just discovered a new way of settling old differences) and the Honourable Robert Fulton Rampini.

There was no question as to the rottenness of the whole thing. Mr. Sawyer openly referred to it in his letters (printed) to his confederates as "our company made to sell"; but it was hoped that by judicious "salting" a profit might be shown for a year or two and the whole thing turned over to the British public, with no doubt the Honourable Robert Fulton Rampini, M.A., I.C.S., Judge of the High Court, Calcutta, figuring prominently among the Directors.

Unfortunately, however, the British public were not taking any tea or tea shares just then, and Mr. David Yule, in announcing the decision of his firm to have nothing more to do with the Syndicate, playfully consoled the members by telling them that he would make them a present of the land!

It was at this juncture the question being whether he should pay more money that Mr. Hamilton came to me. I told him that, so far as I could see, he had made himself legally liable to pay whatever a majority of the Syndicate ordered him to pay; but that I thought he might safely decline, for the thing was so bare-faced a swindle that they would never dare to take it into Court. I said Mr. Rampini for one would give anything to hush the matter up.

Now Mr. Hamilton has not told me that he repeated this to Mr. Rampini. But he has told me that he went and saw Mr. Rampini in connection with the syndicate after his return from privilege leave, and that Mr. Rampini told him I was quite mad. Mr. Hamilton has not, I believe, lost any more money in the syndicate, but Mr. Rampini has lost no chance of doing me a bad turn in the High Court.

It may of course be said that all this was perfectly legitimate speculation on Mr. Justice Rampini's part; but the difference between, say, Mr. David Yule and Mr. Rampini is that one dealing with the former knows what he has to expect. It is like betting at Monte Carlo. You know that the chances are against you: but if you choose to take them the management are ready to oblige.

The reason why it is undesirable that people like Mr. Rampini should take part in these things is that most people are fools and are led by names. Mr. Rampini knows nothing about tea growing, has no qualification but greed of gain for a seat on the Directorate of a Tea Company. But owing to his predecessors in the High Court, he possesses a more or less valuable asset in his title and name. And it is a pity he is not above selling them.

When the old established wine and whisky business of B. Smyth and Co. of Calcutta was turned into a limited company with a High Court Judge as Director, I withdrew my deposits. But I doubt if many other people did. The company has not failed yet. But some of the shareholders, I understand, have been using language which is positively rude.

I need hardly, however, enlarge upon guinea pig Judges seeing that the public has just had the spectacle of a guinea pig Viceroy. The "Outlook" of January 12th, has some remarks upon the subject which seem not inapposite. "The appalling thing is that men of very high standing can sell themselves . . . for what they must suspect can be no other object than to act as the gilded bait for miserable gudgeons among the public. Is it worthy or honest, is it not contemptible and paltry to put the best face upon it?"

There can be no question that Exhibit X 18 was written under orders. I have no doubt Mr. Buckland has or had the draft sent him by Sir John Woodburn. It is written on Government paper and in a Government envelope, and bears a service stamp. Mr. Buckland has franked it and corrected the "Under" Secretary into "Officiating Chief."

The passage in my second letter of 31st December (of which Exhibit X 14 is a copy) did not escape Mr. Buckland's attention. Of course if he is told to copy out Exhibit X 18 he has to do so. But Mr. Buckland knows that I know that the expression is incorrect and that the story of the passage turning up again is a commercial statement.

Mr. Buckland and I lived together over the Currency Office, 11 years ago. It may be owing to that circumstance that he received me on the evening of the 31st December in his shirt. He told me he had read my covering letter and it was all right. I told him I should like it in writing in a few days. He said of course he knew that. As to Exhibit X 12, Mr. Buckland as good as told me he had written it under orders. "The fact is" he said "I had heard you were wanting leave, so I spoke about it to the Governor this morning" (before I applied). Of course, my friends in Calcutta had been making the whole thing as public as possible.

Next day Mr. Buckland sent me Exhibit X 15. Of course he had my letter, Exhibit X 14, before him then.

On arriving at Noakhali on 3rd January, I sent Mr. Buckland the letter of which Exhibit X 17 is a copy. He would in the ordinary course have Exhibit X 14 again

before him and would lay them both before Sir J. Woodburn, for whom and not for Mr. Buckland himself, Exhibit X 17 was obviously intended.

If it were a case of Mr. Buckland personally making such a fuss, about giving me a day's casual leave, Mr. Buckland knows me well enough to know that it is not apologies he would be getting.

Secretaries don't leave letters of this description lying about loose. I was untidy enough when I was in the Secretariat, but I didn't do that. Mr. Buckland's rooms are particularly neat.

They are 15 yards (on the same level) from the Club Library, which contains an ample supply of writing paper and envelopes, and if he had wanted to send me a private note and had run out of paper why didn't he go or send then?

Finally, if the letter was a private one or was not written under orders of Government, what on earth was the objection to saying so?

The explanation which I suggest is that Mr. Buckland's master has ordered him to lie and that Mr. Buckland has refused. I have known some Secretaries who would not lie. One such died lately in Rangoon.

I think as my judgment may be read by people in England, that I had better indicate the reason of Government's extraordinary solicitude for Mr. Reily. It is that the Police Department is the most "genteel" of the refuges for the destitute in the Indian Empire and that there is hardly a man in high place out here who has not got in that department some relative of whom perhaps he may not be very proud, but whom he has no wish to have on his hands.

To go no further, I may point out that only two of the Civilian Judges of the Calcutta High Court, Messrs. Prinsep and Stevens, have grown up sons at all and that both of them have sons in the Indian Police Department.

In the course of this Judgment I have had to deal with and to expose many persons in high place. I have yet to learn however that an English Judge need apologise for such a course if justice requires it.

I will go further and say that the past actions or rather inaction of the High Court with regard to certain of the matters I have mentioned, has, in my humble belief, done much to lessen the confidence of the people of this country in the administration of justice. There are certain qualities which appear at present to preponderate in that body, which may be to the advantage of the individual Judges composing it, but are far from conducing to raise the estimation in which the Court itself is held. The qualities which the public desiderate in a Judge, are those which Burke long since pointed out as those which brought success in their train in an open election for members of Parliament, "a strenuous resistance to every appearance of lawless power; a spirit of independence carried to some degree of enthusiasm; an inquisitive character to discover, and a bold one to display, every corruption and every error of Government." But the qualities which bring men to the High Court Bench at all events from the ranks of the Civil Service, or of the local bar, are rather "an indolent and submissive disposition, a disposition to think charitably of all the actions of men in power, and to live in a mutual intercourse of favours with them; an inclination rather to countenance a strong use of authority, than to bear any sort of licentiousness on the part of the people." "The instinct which carries the people towards the choice of the former," says Burke, "is justified by reason; because a man of such a character even in its exorbitancies, does not directly contradict the purposes of a trust, the end of which is a contest on power. The latter character, even when it is not in its extreme, will execute this trust, but very imperfectly; and if deviating to the least excess, will certainly frustrate instead of forwarding the purposes of a control on Government."

Four years ago one of the most eminent Civilian Judges who have ever adorned the High Court Bench was superseded for the Judicial Membership of the Bombay Council by a gentleman of whom no one outside the Bombay Secretariat had ever heard. I was then in England, and I remember Sir Charles Pritchard remarking sagely "Ah! poor Jardine, he never would do anything to help the Government."

What I think the public feel with regard to some of our present High Court Judges is that they are rather too ready to help the Government. And it would be a great pity if such an impression were to become widely current, for the people of this country look to the High Court to protect them against Government. They are a peaceable folk and it takes a great deal to rouse them, but there are 300 millions of them and it will indeed be a very bad day, even for British prestige if any considerable proportion of that 300 millions get it into their heads that the only way by which we can carry off our abuses is to carry off ourselves.

This judgment is already three times as long as any judgment I have ever before written. But I may be excused for quoting here the words of a former Lord Chancellor with reference to one of the most famous cases of our history, the case of Shipmoney.

"And here the damage and mischief cannot be expressed that the Crown and State sustained, by the deserved reproach and infamy that attended the Judges, by being made use of in this and like acts of power; there being no possibility to preserve the dignity, reverence and estimation of the laws themselves, but by the integrity and

innocency of the Judges and no question as to the exorbitancy of the House of Commons in the next Parliament proceeded principally from their contempt of the laws and that contempt from the scandal of that judgment. So the concurrence of the House of Peers in that fury can be imputed to no one thing more than to the irreverence and scorn the Judges were justly in, who had been always before looked upon there as the oracles of the law and the best guides to assist that House in their opinions and actions. And the Lords now thought themselves excused for swerving from the rules and customs of their predecessors (who, in altering and making of laws, in judging of things and persons, had always observed the advice and judgment of those sages) in not asking questions of those whom they knew nobody would believe. Thinking it a just reproach upon them (who out of their councilship, had submitted the difficulties and mysteries of the law, to be measured by the standard of what they called general reason and explained by the wisdom of state) that they themselves should make use of the license, which the others had taught them and determined that to be law which they thought to be reasonable or found to be convenient. If these men had preserved the simplicity of their ancestors in severely and strictly defending the laws, other men had observed the modesty of theirs, in humbly and dutifully obeying them." Clar. Hist Rebell I, 69.

In dealing with this case I have done what I have humbly conceived to be my duty. It remains for their Lordships of the High Court to do what they conceive to be theirs.

Finding and Sentence.

The Court of the Sessions Judge of Noakhali, agreeing with both the Assessors, convicts Sadak Ali, Aslam and Anwar Ali of murder. Under section 302 of the Indian Penal Code the Court directs that the said Sadak Ali be hanged by the neck till he is dead, and that the said Aslam and the said Anwar Ali do undergo transportation for life. The Court agreeing with both the Assessors' acquits Yakub Ali of murder and the Court directs that the said Yakub Ali be set at liberty.

The proceedings will be submitted to the High Court for confirmation of the sentence of death passed upon the accused Sadak Ali.

A. PENNELL,
Sessions Judge.

Noakhali,
The 15th February, 1901.

STATEMENT of the accused SADAK ALI, dated 7th December, 1900.

Q.: Did you murder Islam Jagirdar? What have you to say?—*A.*: I did not murder Islam Jagirdar. I am quite innocent. I shall put in a written statement.

Statement of the other accused Aslam, Anwar Ali and Yakub Ali is the same as above.

WRITTEN STATEMENT OF THE ACCUSED PERSONS.

1. We are not at all guilty, nor did we murder Ismail Jagirdar, we have unjustly and falsely been accused owing to a conspiracy.

2. Nanda Kumar Das *alias* Nunda Basi Das, Nanda Thakur and Sadak Ali residing in our quarter are touts and notorious litigants. At the time of Police investigation in this case they threatened several villagers and extorted money from them; they also demanded money from us, but at last we declined to pay; hence there was misunderstanding with them. On account of the said grudge the said Nanda Basi and others tutored their neighbours and by witnesses long after the occurrence and have brought this charge.

In point of fact we are quite innocent and are entitled to be discharged in the equitable judgment of the Court.

TRANSLATION of the EXAMINATION of the accused SADAK ALI, before the Committing Magistrate.

The examination of the accused, aged about 40 years, taken before me, Kali Sankar Sen, Deputy Magistrate at Noakhali, on the 19th day of December, 1900.

My name is Sadak Ali. My father's name is Asrap. I am a Mussulman by caste and a husbandman by profession. My home is at Mouzah Salia, Thana Sudharam, District Noakhali.

Q.: Did you murder Islam Jagirdar? What is your defence?—*A.*: I did not murder Islam Jagirdar. I am innocent. I have filed a written statement.

KALI SANKAR SEN,
Deputy Magistrate.

SADAK ALI,
Accused.

The 7th December, 1900.

The above examination was taken down with my own hand. It contains a full and true account of the statement made by the accused.

KALI SANKAR SEN,
Deputy Magistrate.

The 7th December, 1900.

TRANSLATION of the EXAMINATION of the accused ASLAM before the Committing Magistrate.

The examination of the accused, aged about 30 years, taken before me, Kali Sankar Sen, Deputy Magistrate at Noakhali, this 7th day of December, 1900.

My name is Aslam. My father's name is Lakhi Goldar. I am by caste Mussulman and by occupation husbandman. My home is at Mouzah Salia, Thana Sudharam, District Noakhali.

Q.: What is your defence? Did you or did you not murder Islam Jagirdar?—*A.*: I did not murder Islam Jagirdar. I am innocent. I have filed a written statement.

KALI SANKAR SEN,
Deputy Magistrate.

ASLAM,
Accused person.

The 7th December, 1900.

The above examination was taken down with my own hand. It contains accurately the whole of the statement made by the accused.

KALI SANKAR SEN,
Deputy Magistrate.

TRANSLATION of the EXAMINATION of the accused ANWAR ALI before the Committing Magistrate.

The examination of the accused person, aged about 30 years, taken before me, Kali Sankar Sen, Deputy Magistrate at Noakhali, this 7th day of December, 1900.

My name is Anwar Ali. My father's name is Hyder Ali. I am by caste a Mussulman and by occupation a cultivator. My home is at Mouzah Salia, Thana Sudharam, District Noakhali.

Q.: Did you or did you not murder Ismail (?) Jagirdar? What is your defence?—*A.*: I did not murder Ismail (?) Jagirdar. I am innocent. I have filed a written statement.

KALI SANKAR SEN.

ANWAR ALI (*by mark*),
Accused person.

The 7th December, 1900.

The above examination was taken down with my own hand and it contains accurately the whole of the statement made by the accused.

KALI SANKAR SEN,
Deputy Magistrate.

The 7th December, 1900.

TRANSLATION of the EXAMINATION of the accused YAKUB ALI before the Committing Magistrate.

The examination of the accused person, aged about 27 years, taken before me, Kali Sankar Sen, Deputy Magistrate at Noakhali, this 7th day of December, 1900.

My name is Yakub Ali. My father's name is Chowdhuri Chowdhuri. I am a Mussulman by caste and a cultivator by profession. My home is at Mouzah Chur Uriya, Thana Sudharam, District Noakhali.

Q.: Did you murder Ismail (?) Jagirdar?—*A.*: I did not murder Ismail (?) Jagirdar. I am innocent. I have filed a written statement.

KALI SANKAR SEN.

YAKUB ALI,
Accused.

The 7th December, 1900.

The above examination was taken down with my own hand and it contains accurately the whole of the statement made by the accused.

KALI SANKAR SEN,
Deputy Magistrate.

The 7th December, 1900.

TRANSLATION of the WRITTEN STATEMENT of the Accused Persons.

Written statement of the accused Abdul Halim and others, filed on the 7th December, 1900, in the Court of the Committing Magistrate.

Idrich Mea - - - - - - - - - *Complainant*,

versus

No. 1, Abdul Halim, No. 2, Sadak Ali, No. 3, Anwar Ali, No. 4, Aslam, No. 5, Yakub Ali.

Case under Section 302, Indian Penal Code.

1. We did not commit any offence and we did not murder Ismail (?) Jagirdar. We have been unjustly, maliciously and falsely accused in this case. Nunda Kumar Das *alias* Nanda Bashi Das, Nunda Thakur and Sadak Ali three persons of this part of the country are touts fond of litigation. During the Police investigation of this case these men extorted money from many people by threats. They demanded money of us and on our refusal to pay any, a misunderstanding has arisen between them and ourselves. The said Nunda Bashi and others out of malice got up false evidence by tutoring mendacious witnesses from among their neighbours, and caused this false case to be brought a long time after.

2. In point of truth we are quite innocent; and are justly entitled to acquittal.

YAKUB ALI.
ABDUL HALIM.
SADAK ALI (*by mark*).
ASLAM.
ANWAR ALI (*by mark*).

Dated 1st December, 1900.

Known to me:
A. AZIZ,
Mukhtar

Bengal Police No. 4.

No. 22.

Post-mortem Report.

STATION SUDHARAM.

The 26th day of August 1900.

Name, sex, age, and caste.	Whence brought—Village and Thana. Distance of village from dead-house.	Name and number of constable by whom brought and names of any relatives accompanying.	DATE AND HOUR: Of despatch from village.*	DATE AND HOUR: Of arrival at dead-house.*	DATE AND HOUR: Of examination by Civil Surgeon or his Assistant.	Information furnished by Police.*	By whom identified to the Medical Officer.†
Ismail Jagirdar, male, age 60 years, Mussulman.	Chur Uria Village Sudharam, Police Station 5 miles, north-west from dead-house Noakhali.	Constable, Ramdhon Baruya, of Sudharam, Police Station, relatives Yakub Ali, Waliullah.	The 26th August, 1900, at 12 A.M.	The 26th August, 1900, at 2.45 P.M.	At 4.30 P.M., the 26th August, 1900. N. C. D.	The cause of death of the deceased was not known, his body was found dead in a water tank, good many bruises, black marks, swelling and a small punctured wound in the back just near the loin were found on the body. Blood mark on the penis. KRISHNA K. SARKAR. The 26th August, 1900.	By Police Constable Ramdhon Barwahi, and Edus Miah, son of the deceased.

* To be filled in by the Police.

† To be filled in by the Medical Officer.

N.B.—The Medical Officers will observe the state of all the organs, and when no disease or injury is found, write "healthy."

I.—External Appearances.

1.—Condition of subject—stout, emaciated, decomposed, etc.	2.—Wounds—position, size, characters.	3.—Bruises—position, size, nature.	4.—Mark of ligature on neck, dissections, etc.
Fairly well nourished, fresh.	Several small abrasions of skin varying in size from $1\frac{1}{2}'' \times \frac{1}{8}''$ to $\frac{1}{8}'' \times \frac{1}{8}''$ on left front and side of the chest. Similar appearance on the right side of neck and top of the right shoulder. Ditto on the right side of chest one abrasion about $\frac{1}{8}'' \times \frac{1}{8}''$ on the back of the right forearm one abrasion about $\frac{1}{4}'' \times \frac{1}{8}''$ on the back of right knee. Ditto in front of left knee one very small abrasion on the penis.	The top and right side of the head, the right half of the forehead and the right cheek were generally bruised. There was a bruise about $2'' \times 1''$ on the back to the left of spine. The left upper eyelid was denuded of skin.	None.

NOTE.—The spinal canal need not be examined unless any indication of disease or injury exist.

II.—Cranium and Spinal Canal.

1.—Scalp, skull, and vertebræ.	2.—Membranes.	3.—Brain and spinal cord.
The skull and vertebræ were uninjured and healthy. The scalp on the top and right side of the head was bruised. Effused blood was found underneath it in these parts.	Congested, otherwise healthy.	Brain congested, otherwise healthy, spinal cord not examined.

III.—Thorax.

1.—Walls, ribs, and cartilages.	2.—Pleura.	3.—Larynx and trachea.	4. Right lung.	5.—Left lung.	6.—Pericardium.	7. Heart.	8.—Large vessels.
Healthy.	Healthy.	The mucus membranes congested. Otherwise healthy.	Healthy, except at its lower margin where it was adherent to the diaphragm and its (*illegible*) appearance of congestion.	Healthy, congested.	Healthy.	Healthy, empty.	Healthy, filled with dark blood.

IV.—Abdomen.

1.—Walls.	2.—Peritonium.	3.—Mouth, pharynx and œsophagus.	4.—Stomach and its contents.	5.—Small intestine and its contents.	6.—Large intestine and its contents.	7.—Liver.	8.—Spleen.	9.—Kidneys.	10.—Bladder.	11.—Organs of generation, external and internal.
Healthy.	Healthy.	Healthy.	Healthy, empty.	Healthy, contained healthy fæces.		Congested, otherwise healthy.	Healthy.	Deeply congested, otherwise healthy.	Healthy, contained a quantity of urine.	Healthy.

V.—Muscles and Bones.

1.—Injury.	2.—Disease or deformity.	3.—Fracture.	4.—Dislocation.
None.	None.	The lower jaw bones fractured about $1\frac{1}{2}''$ above the angle on the right side.	None.

More detailed description of injury or disease.

Body of a fairly well nourished Mahomedan male brought in and indentified to me by Police Constable Ramdhan Baruah and Idris Mian, son of the deceased. It was fresh. The face was generally congested, the front of the neck was swollen, the top and right side of the head, the right half of the forehead, and the right cheek were bruised. There was also a bruise on the back to the left of spine, several abrasions of skin varying in size from $1\frac{1}{2}'' \times \frac{1}{8}''$ to $\frac{1}{8}'' \times \frac{1}{8}''$ were found on the left front and side of the chest, right side of the neck, top of right shoulder, right side of chest, back of right forearm, back of right knee, front of left knee, and on the penis. The left upper eyelid was denuded of skin. On dissecting the scalp and the skin of the face quantities of effused blood were found underneath, on the top of the head, on the forehead, on both temples, and on the right cheek. There was a large clot of blood on the right temple, effused blood was also found under the skin in front and sides of the neck. The lower jaw-bone was fractured. The internal organs were all healthy except the right lung at the lower (*illegible*) of which signs of old inflammation were found. The brain and membranes, the lungs, the liver, and the kidneys were congested. The body is reported to have been found in a tank, but none of the usual signs of drowning was found.

Remarks by Civil Surgeon.

I am of opinion that death in this case was due to violence.

Impossible to say decidedly, he was probably struck on the head by some hard blunt weapon or thrown down upon something hard, and his neck may have been pressed.

U. C. DUTTA,

Offg. Medical Officer, Noakhali.

The 28th August, 1900.

PETITION OF APPEAL.

To SIR FRANCIS WILLIAM MACLEAN, KT., K.C.I.E.,

Chief Justice and his companion Judges of the High Court of Judicature at Fort William in Bengal.

The humble petition of Sadak Ali, son of Asrof, at present of Sudharam Jail, most respectfully showeth :—

That your Lordship's humble petitioner has been found guilty of murder of one Ismail Jagirdar under Section 302 I.P.C. and sentenced to death by the Sessions Judge of Noakhali on the 15th February 1901 in Sessions Trial No. 1 of the first quarter of 1901. He accordingly begs to prefer this appeal amongst other on the following grounds :—

First.—That there is no reliable evidence on the record to prove the guilt of your Lordship's petitioner. The learned Sessions Judge has very unjustly and on insufficient grounds relied upon the testimony of the witnesses examined for the prosecution and found him guilty under the aforesaid Section and passed the extreme penalty of law.

Second.—That the mission which is said by the two witnesses Hosan and Torap to have led them to Baley Shahib's market and the third witness Islam to Karamulla's house and thence to the alleged place of occurrence at that hour of night is, on the face of it, an improbable one. The learned Sessions Judge has not paid due attention to this.

Third.—That on reading the evidence of prosecution witnesses Abdul and Ahamed Ali, one is forced to come to the conclusion that the deceased Ismail Jaigirdar had got to his house at about a *danda* of night, *i.e.*, within 24 minutes after sunset and before the heavy rains and the high wind had ceased ; whereas the occurrence is said to have been witnessed at 9 *gharies* of night, *i.e.*, at 8.30 or 9 p.m., at his door by the prosecution witnesses Torap Ali and Hosan Ali, who had left Baley Shahib's *hat* (according to their own statement at 2 gharies of night and after the rains had ceased), a good $3\frac{1}{2}$ miles from the house of the deceased. The attempts of the learned Sessions Judge to meet this strong point in favour of your Lordships' petitioner are utterly futile.

Fourth.—That the improbability and untruthfulness of their evidence is apparent from another strong circumstance that the night was very dark as it was a new moon night and was one in the month of August, and that it was attended by incessant rains and high winds for some hours.

Fifth.—That the so-called three eye-witnesses Torap Ali, Hosan Ali and Islam should have been declared to be false and got-up witnesses in consideration of the fact that they did not turn up as witnesses before the Daroga during the investigation which extended over a considerably long period ; that Idris who had been found to be "singularly intelligent lad" did not name them in petition (Exhibit 3) ; that he named only one out of the three witnesses before the District Superintendent of Police on the morning of the 9th, and that the list of witnesses given on the 10th September (Exhibit B4) and the *Hajira* given on the 12th (Exhibit B7) did vary with each other in spite of the fact that he is said to have become aware of their names shortly after the murder, *i.e.*, on Friday.

Sixth.—That the non-production of any of the witnesses said to have been present at the time when the eye-witnesses are said to have deposed should have aroused suspicion in the mind of the Sessions Judge and led him to reject them as false witnesses, and also to depend upon the statement of Head Constable Krishna Chandar Bhadra (Defence witness No. 1), and also on the Police Diaries which have been exhibited in this case.

Seventh.—That the statement made by the said witnesses and Idris if carefully sifted would very clearly point that their story was a tissue of falsehood and utterly unreliable and improbable.

Eighth.—That the request of the defence pleader to finish the examination-in-chief of the witnesses Torap Ali and Hosan Ali first and to allow him to cross-examine them on the same day (which would be possible) was very reasonable one and ought to have been granted.

Ninth.—That the statement of Idris that he did not take much notice as to what evidence the Daroga was taking under the tamarind tree on the 28th August, and that he was moving hither and thither, coupled with the facts mentioned in paragraph 5 of this petition, would clearly point that the so-called three eye-witnesses were tutored witnesses and got up for the purpose of the prosecution.

Tenth.—That the testimony of Idris on some material points varies from his statement in the second first information (Exhibit 2), and that both the first and second informations are discrepant.

Eleventh.—That the learned Judge has erred in law in using the testimony of the Civil Medical Officer given before the committing Magistrate as he was not cross-examined then. Even if it were admissible in evidence it would show the absurdity and falsity of the statements of the two eye-witnesses Torap Ali and Hosan Ali which the learned Court below has not considered.

Twelfth.—That the evidence of the three so-called eye-witnesses differs materially from the statements they made before the District Superintendent of Police on the important particulars, and as such they ought not to have been believed in.

Thirteenth.—That the learned Judge of the Court below should have held that the petition filed by the eight witnesses on the 21st September (Exhibit 4) was an after-thought meant to explain away the facts of the witnesses not appearing before the Daroga.

Fourteenth.—That the Sessions Judge has failed to see that the evidence of prosecution witness No. 9 Rajob Ali to the effect that he saw the four accused at sunset under a *Bat* tree near *Utsara dighi*, ¾ of a mile south-east of the deceased's house, points to the fact that the prosecution had wanted to make out another story and fixed another spot as the place of occurrence.

Fifteenth.—That the circumstantial evidence wanted to be afforded by Abdul Aziz, witness No. 8, and that of Mahabbat Ali before the lower Court should have been held to have been got up. Moreover, the statement of the latter is in conflict with that of Idris.

Sixteenth.—That the evidence of immediate motive given on the side of prosecution was not wholly reliable as it comes from Idris (who had to admit) that all the villagers were his father's enemies.

Seventeenth.—That the reason assigned by the learned judge of the Court below for Torap and Hosan's taking longer road instead of shorter one, as shown in Exhibit 5, is not very sound, considering the position of life of the two witnesses and the urgency of the occasion, and also considering that peasants as they are, they would not mind crossing one or two breaks, the depth of which was a little over one or two feet.

Eighteenth.—That the learned Sessions Judge is wrong to suppose that Mr. Reily's testimony was a "sheet anchor" in the case for defence. It was wrong to prefer the statements of two most insignificant cultivators to the testimony given by the District Superintendent of Police on points in which they deferred. The lower Court has unjustly stigmatised the evidence of the latter as tissue of falsehoods.

Nineteenth.—That the learned Sessions Judge is in error to hold that the investigating Police Officer Osman Ali, is a relative of the accused men. The evidence given on this point is most unreliable and insignificant, and has been sufficiently rebutted by the defence witnesses.

Twentieth.—That the learned Sessions Judge having admitted the Police Diaries in evidence was in error not to allow the same to be used in evidence by the accused men's pleader.

Twenty-first.—That the learned Sessions Judge has introduced several extra-judicial matters which seem to have weighed his mind and prejudiced the accused in their trial.

Twenty-second.—That the learned Judge has erred in law in exhibiting after trial with the aid of assessors was over.

Twenty-third.—That the learned Judge has unjustly stigmatised the whole of the evidence adduced in defence as unreliable, and remarks in most cases against them are unjustifiable.

That your Lordships' humble petitioner therefore most respectfully prays that Your Lordships will be graciously pleased to call for the records in the case, and after going through them will be graciously pleased to set aside the order of conviction and sentence passed upon him.

And your Lordships' petitioner as in duty bound shall ever pray.

Thumb impression.

Noakhali Jail,
The 2nd March, 1901.

Prisoner put his mark in my presence.

J. MITRA,
Jailor.

FIRST INFORMATION REPORTS.

First information given at 9 a.m., 26th August 1900, by Idris Mia.

Yesterday at about 9 or 10 a.m., my father left home to look after a case in this town of Sudharam; he did not return home. My father used to collect rents of the Bhullua estate; he had his own cases too. We thought my father might have been staying somewhere or have gone to some relations and hence we did not search him that night. This day early in the morning after rising from bed I came to the *darja* (gate way) of our

bari and found my father's dead body floating with its face downwards in about three cubits of water by the front of the west *ghat* of the tank on the front of our *doroja*. Hearing my cries my neighbours Naimuddi Miji, Abdul Aziz, Abdul Halim, Muhammed Ali Moulvi and others came there and saw the dead body floating. The dead body is still in the water; it has not been taken up. I cannot say how did my father fall into the water; he had no epilepsy. I cannot say how did he die. I know how to read and write. My father was aged about 60 years. Osman Ali Chowkidar of our beat came with me while I came to lodge information.

IDRIS MIAN.

The 26th August, 1900.

My name is Idris Mian, son of Ismail Jagirdar of Chur Uria, Police Station Sudharam, aged 16 or 17 years; to-day morning my father Ismail Jagirdar's dead body having found floating in the tank at the *darga*, not knowing how his death was caused, I lodged an information with you, Osman Ali, Sub-Inspector. After the information, a Jamadar, whose name I don't know, went to our *bari* and had the body brought out of the tank, and I saw that my father's left eyelid was denuded of skin and bruises on forehead and on both the sides of it. Having seen injuries and bruises on the body of my father, I became senseless and so could not mark well the injuries and bruises on various parts of my father. From what I have seen I suspect that some persons have murdered my father who had emnity with Sadak Ali of Salla whose father's name not known, Aslam, son of Lukhi Goldar of the same place, Imdadullah, son of Hamidullah of Chur Uria, Anwar Ali, father's name not known, of Chur Uria, Abdul Halim, son of Bhola Gazi of Chur Uria, Osman Ali Chowkidar of the Mohalla, Fazar Ali, his brother of the same *bari*, Abdul Hakim, father's name not known, of Chur Uria and Abdul Karim of Chur Uria. I suspect that these or such other enemies of my father have put my father to death. The said Imdadullah and Abdul Halim told me to give my information without accusing any one. I with them went to Ashraf Ali Mukhtear's for consultation. I met Sadak Ali near a culvert south of the said *mukhtear's* house. Sadak Ali was coming to the south, we were going to the north. Sadak Ali did not speak with us. After we went to the *mukhtear's* house the *mukhtear* told us to give information as we saw. After this I came to the station and lodged information at 8 or 9 a.m. I want inquiry of my father's murder. The said Sadak Ali, Aslam, Anwar Ali, Imdadullah, Abdul Halim, Osman Ali Chowkidar, Fazar Ali and Abdul Karim are our *ryots*. My father had enmity with them as regards rents. My father had many suits with Abdul Hakim in Criminal and Civil Courts. The Jamadar sent me with the body to the Civil Medical Officer. The delay in giving information at the station was due to sending the body of my father to home for burial from the *post-mortem* house. I know to read and write. Yesterday at 10 a.m., my father came to the town from our house. He did not return at night. My father used to serve the Bhulua Zemindar. He came to the Civil Court on some business of the Zemindar. He not returning home at night we thought he stayed at town, or at some relative's house. On question he said he did not know whether anyone else accompanied him. To-day awaking from sleep I saw his body floating in the tank of our *darga*. Our neighbours Abdul, Naimuddin Miji, Abdul Aziz, Musa Mian Moulvi and others witnessed this. My father had a *dhoti* of black border, white *pirhan*, white sheet, cap on and a black umbrella, while coming from home. I know these articles. He had papers in his pockets. I cannot give their details. I saw the *dhuti* only in my father's wearing while floating in the water. I do not know whether he had any money with him, my father had no disease.

IDRIS MIAN.

The complainant subscribed his name after the *ijahar* was read over and admitted correct.

OSMAN ALI,
Sub-Inspector.

File with the record of the case.

(Illegible),
Deputy Magistrate.

The 25th October, 1900.

PROCEEDINGS OF THE COURT OF SESSION.

In the case of

THE KING-EMPEROR ... ... *Complainant,*

versus

SADAK ALI AND OTHERS ... ... *Accused.*

PART II.

Date fixed for hearing—The 28th March 1901.

Proofs compared by:

W. C. RABEHOLME, G. C. GHOSE, DAVID CARR and D. N. DAS.

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EXHIBIT III.

L. PENNELL,
Sessions Judge.

The 7th January, 1901.

PETITION OF IDRIS MIA IN THE COURT OF THE DISTRICT MAGISTRATE.

No. 496.

No. 537.

To D. S. P. for early report. His attention is drawn to paragraph 5.

J. A. E.

The 6th September, 1900.

In the Court of the District Magistrate, Noakhali.

The humble petition of Idris Mia, son of late Ismail Jaigirdar of Chur Uria, Station Sudharam.

Most respectfully Sheweth—

1. That on the 9th Bhadro (25th August) the father of the petitioner came to town to conduct a case in the Civil Court, and that he did not return home that night.

The petitioner may produce his witnesses before the District Superintendent, Police. J. A. E.
The 7th September 1900.
Seen. R. SEN.
The 7th September 1900.

2. That early in the following morning (26th August) the dead body of the father was seen floating in a tank in the petitioner's *ghata*; that thereupon the petitioner came to town and informed the police about it.

3. That of medical examination it was found that the death of the petitioner's father was due to severe beating.

4. That the petitioner and his mother suspected their enemies and named them before the police; and that during the police investigation it has been disclosed by some persons that the said suspected enemies actually caused the death of the father.

Incorrect, no such evidence has been elicited.
W. Y. R.
The 6th September.

5. That in spite of the evidence before the police, the police is silent up to date. That the Sub-Inspector Osman Ali being a local man, most of the accused persons are directly or indirectly related to the said investigating sub-inspector and his son's father-in-law, Amjad Mea; and that during the investigation the said Amjad Mea was all along with the sub-inspector.

That the inspector of police sometimes went to the village at the time of investigation, but the purpose and effect of his going there was best known to him.

He is a punchayet and went to the village with other punchayets on being called by the Inspector. The statements mentioned here are all nonsense. I have visited the spot and tested the enquiry.
W. Y. R.
The 6th September.

That considering all these facts the petitioner is inclined to believe that no proper care was or will be taken by the police to bring the culprits to justice.

6. That there are direct and circumstantial evidence to bring home the charge against the accused.

The Inspector has been supervising the enquiry locally and has kept me informed daily of how the enquiry is proceeding. Up to date there is no direct or circumstantial evidence against the accused; in fact there is not an atom of evidence against any one. The complainant may be directed to produce his witnesses before me whom he thinks will prove the case.
W. Y. REILY.
The 6th September.

7. That the place of occurrence is near the town; and that the humble prayer of the petitioner is, that your worship will be pleased to take up the case from the hand of the police and take down the evidence by your worship's self, or order due enquiry by a competent court.

Noakhali,
The 5th September, 1900.

EXHIBIT 26a.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

(Translation.)

SPECIAL DIARY, SECTION 172, C. P. C.

Idris ... ... Informant.

No. and date of first information report.

Case No. 36, regarding accidental death of Ismail Jaigirdar caused by his falling into water, dated the 26th August, 1900, 9 a.m. Occurrence between 10 a.m. of 25th August, 1900, and 6 a.m. of 26th August, 1900.

Committed to Sessions.

(Initial illegible.)

The 7th December, 1900.

Fixed for—

The 15th October, 1900.
The 16th October, 1900.
The 17th October, 1900.
The 29th October, 1900.
The 10th November, 1900.
The 21st November, 1900.
The 22nd November, 1900.
The 1st December, 1900.
The 3rd December, 1900.
The 6th December, 1900.
The 7th December, 1900.

Date and hour—26th August 1900—9 a.m.—At the Station.

Informant did not know how the death was caused.

1. The informant on coming into the station at 9 a.m. of this day, the 26th August 1900, stated before the senior sub-inspector of the station that he had seen the corpse of his father Ismail Jaigirdar floating this morning, on the water of the tank to the east and in front of the *daroza* of their house; that he had gone to the town yesterday at 10 a.m. for the purpose of looking after a case in the Court; that he did not know how he had come by his death. This is considered as *itala* (information) No. 36 regarding accidental death; and I am deputed to carry on an investigation in respect of this matter. So I start for the mofussil with the constables Ramdhone and Gobinda Pali.

From 11 A.M. to 12 A.M. Chur Uria, Naimuddi Miji, Mahabbat Ali, Jinnat Ali, Elahibuksh, Meher Ali, of Chur Uria, Hamidulla of Paran Jogan Nath, I. O. Head Constable Krishna Chunder Bhadra, arrived at the spot and made inquest of the corpse and sent the body for *post-mortem* examination.

2. On arriving at the house of the informant at the village of Chur Uria I called the principal men of the village stated in the margin and in their presence saw the corpse of the deceased Ismail Jaigirdar floating reversed (with face downward) at a distance of three cubits to the east from the side of the *ghat* at the south-west corner of the tank to the east of the *daroza* of the informant's house. On bringing up the corpse of the deceased from three cubits of water through Eakub Ali and Jinnat Ali of Dharmapur and Lasker Ali of Chur Uria, I examined it and found that the deceased was aged about 60 years, of dark complexion, with both hands bent upwards, one black *churi* bordered *dhuti* of *naensuk* (fine cloth) as wearing cloth, tufted beard, cropped moustaches, the hair whereof being here and there grey, eyes and mouth closed, scars of small-pox on the face, one black mark of abrasion over the socket of the right eye on the right side of the forehead, one black mark in the middle part of the forehead, and one black mark between both eyes in the middle part of the nose, marks of abrasion below the left eye, below the right eye (and) on both the lips, mark of abrasion on the back of the right ear, white mark of the parting of the skin below the neck on the left side of the breast, nose oozing out water, one mark of abrasion at the joint of the right arm, one mark of swelling on the left side of the spine on the back, one slight mark like that made with some pointed thing in the middle of the waist on the back, and blood mark at the base of the penis. There is also slight mark as that made by some pointed thing at the ankle of the right leg. The palm of the hands and the sole of the feet were stiff. Save and except these, no other visible marks and wounds were found. The cause of the death of deceased could not also be known. Nothing could be positively known how these marks and wounds were caused. I therefore draw out a report of the examination of the dead body on a separate paper and send to the Sudder Hospital, by a *challan* etc., the corpse in a cart through Ramdhone Constable for the examination of wounds, etc., on the person of

the deceased. From the condition of the dead body (I think) it is not improbable that the deceased died on being wounded by somebody. Accordingly I instructed Ramdhun Constable to take the informant with him and to inform the senior sub-inspector of the circumstances, etc., of this occurrence.

3. 1 p.m. Chur Uria.—I engage myself in making a search in the water of the tank where the occurrence took place, in the jungle and in the dense jungle, etc., in the neighbourhood. I came to know that the deceased had on his person one white shirt and one fine white sheet and had also with him one old umbrella with black cloth and eight iron rods.

It was informed that the deceased had with him before death one plain shirt, one thin sheet and one umbrella having eight iron rods.

4. 7 p.m. Ditto.—I made a search in the water of the tank where the occurrence had taken place, in the jungle, in the dense jungle close by, and in the roads on all sides. There is a road for going to and coming from the house running towards the east through the southern embankment of the tank where the occurrence took place. A small space of ground at a distance of 118 cubits to the east from the spot where the corpse was found at the south-eastern corner of the said tank was a raised one. It has been cut to a depth of 2½ cubits and levelled with the road on the eastern side of the tank. There were the (following) marks at the said spot. A human knee-joint mark at 16 *angulis* above the lower ground on the southern side of the road, one mark somewhat larger than the said mark, 12 *angulis* above at a distance of six cubits from the said marks towards the west, two marks of human feet at one place 2½ cubits above the said road, and a mark like that of human knee-joint 12 *angulis* above the road on the northern side ; and it was found that two *goada* plants higher up on the southern side had been pressed by human feet. No other marks were found. Accordingly I prepared a map of the said spot. Nothing has been known from enquiry up to this time as to the cause of the death of the deceased. The clothes, etc., which he had with him were not also found out on enquiry, nor was the result of the examination of the corpse of the deceased received. The distance from the spot where the corpse was found to the *ghur* of the outer apartment of the house of the deceased is 39 cubits. The *basat ghur* lies at a distance of 12 cubits towards the west from the *ghur* aforesaid. I therefore remain engaged in carrying on further investigation and close the diary this day.

Marks of human knee-joints, feet, and two shrubs of thrashed *goada* were seen, and a plan of the spot prepared.

Exhibit 26b.
A. PENNELL,
Sessions Judge.
The 16th January 1901.

KRISHNA CHUNDER BHADRA,
Head Constable, Sudharam.

Sent on the 27th August 1900 from Chur Uria at 12 a.m. through Imamuddi Chowkidar.

OSMAN ALI,
Sub-Inspector.

Filed 27th August, 1900.

Received on the 27th August, 1900, at 5.m.

LAKSHMI KANTA CHUCKERBUTTI,
Writer Constable.

A case No. 13, under Section 302, Indian Penal Code, in connection with this accidental death has been instituted. So two copies of diary in respect of this matter is made over.

KRISHNA CHUNDER BHADRA,
Head Constable.

The 27th August, 1900.

Started 28th August, 1900.

T. A. M.
(Illegible.)

Filed with the next diary and put up before Divisional Inspector for needful.

(Initial illegible.)

The 28th August, 1900.

Submitted.

(Initial illegible.)

The 29th August, 1900.

It appears that a separate copy of this diary was sent to District Superintendent of Police and so this copy is not sent.

(Initial illegible).

The 30th August, 1900.

EXHIBIT 27a.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

(Translation.)

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

Idris Mia ... ... Complainant,

versus

Sadak Ali and others ... ... Suspected Defendants.

Section 302, Indian Penal Code.

Number and date of first information report.—No. 13, 26th August, 1900. Instituted between 7½ and 8½ p.m.

Date of occurrence.—Between 10 a.m. of 25th August, 1900, and 6 a.m. of 26th August, 1900.

Date and hour.—27th August, 1900, 2 a.m. Chur Uria.

1. The complainant on coming into the station at 9 a.m. of 26th August, 1900, stated before me that his father Ismail Jagirdar, had gone to the town at 10 a.m. on the 25th August for the purpose of looking after a case in the Court; that he had not returned home; that he saw his father's corpse floating on the water of the tank near the *daroza* of their house in the morning of the 26th August; that he did not know how his father came by his death, and so forth. So, this was considered as an *itala* (information) No. 36 regarding accidental death; and I appointed the head constable, Krishna Chunder Bhadra, to carry on investigation.

A. F. I. R. of crime, started at 7½ P.M. of 26th August 1900.

On going yesterday to Bibir Bazar for making a search in the shop of the accused in case No. 12 of the month current I saw that the *ghur* of the accused there had been closed by a padlock, and that the accused was not present. I came to know that the accused had gone to (illegible) Hat. Thinking that it is was not proper to enter his room by breaking the padlock in his absence, or in the absence of any person attending on his behalf, and that it is necessary to know the condition of the corpse of Ismail Jaigirdar in connection with the accidental death (information) No. 36, lodged yesterday, that is, this case No. 13, I kept a constable to watch in the front of the shop of the accused in case No. 12, sent a man to bring the father of the said accused, and then went to the hospital. When I came back to the Thana from that place, after being cognisant of the circumstances (that is) at the said time the complainant made a statement regarding murder in connection with this case.

ABSTRACT OF THE COMPLAINANT'S STATEMENT.

After the complainant had made the statement of accidental death yesterday, Krishna Chunder Bhadra, of the station, went to his house and caused the corpse of his father to be brought up, upon which he found that the eyelid of the left eye of the said corpse had parted off, and that there were marks of wounds on the forehead and on both sides thereof. He could not distinctly see what sorts of wounds and at which parts they were. From what he saw he suspected that somebody had murdered his father. His father had enmity with Sadak Ali of Salia, whose father's name is not known to him; Aslam, son of Lakshmi Goledar, of the said place; Emdadulla, son of Hamid Ali, of Chur Uria; Anwar Ali, of Chur Uria, whose father's name is not known to him; Abdul Alim, son of Bejna Gazi, of Chur Uria; Osman Ali, the Chowkidar of the *mohalla;* the said Chowkidar's brother, Fazar Ali; Abdul Hakim, of Chur Uria, whose father's name is not known to him; and Abdul Karim, of the said place, whose father's name is not known to him. He suspects that either they or any other enemy of his father murdered him. The said Emadadulla and Abdul Halim told him to make a statement without accusing anybody in connection with the death of his father. When he (his father) left home he had a bordered *dhuti*, one white shirt, and one white sheet on his person, and had also one umbrella with black cloth and bamboo stick, as well as papers in the pocket of his shirt. On his making these and other statements at the time aforesaid, I considered the same as first information, and then engaging myself in carrying on investigation in the theft case, No. 12, made a search in the (shop) of the accused in that case, kept the recovered articles, etc., in charge of the station, started from the station at 12 p.m. yesternight with Rajani Chanda, Nur Mea, Mahomed Ali, and Abdul Hamid, the constables, now reached the village where the occurrence took place, and finding the head constable, Krishna Chandra Bhadaa, and coming to know of the result of the proceedings of investigations made by him up to this time, engage myself in carrying on investigation.

Sub-Inspector Osman Ali Mia arrived at the spot and commenced investigation.

2. I engage Krishna Chandra, head constable, along with Rajani Chanda and Nur Mea, constables, (to) secretly keep eye upon the doings of the suspected accused, and to see whether they can find out any clue leading to success, on secretly going round.

3 A.M. Chur Uria.

I arrived at the complainant's house. The head constable Krishna Chunder Bhadra along with his companion constables appeared and said that he had gone round through the village where the occurrence had taken place and had not got any clue leading to success. I inspected the spot in the tank where the corpse had been found and the spots in the road where the marks of knee-joints, &c., were, as mentioned in paragraph 4 of the diary No. 1 of the head constable. Nothing was found in addition to what had been written in the said paragraph by the head constable. The map presented by the head constable is kept herewith by me.

6 A.M. Complainant's house at Chur Uria.

4. I took the deposition of the complainant's mother Rokeya Banu. She suspected Aminuddi ,son of Jaharaddi of Chur Uria, and Yakub Ali, whose father's name is not known to her and who lives in his house in addition to the persons suspected by the complainant.

6 A.M. Complainant's house at Chur Uria.
Aminuddi and Yakub Ali were also suspected.

Exhibit No. 27b.
A. PENNELL,
Session Judge.
The 16th January 1901.

5. I along with Mahomed Ali, Rajani and Abdul Hamid the constables, started to make searches in the houses of Sadek Ali, Aslam, Osman Ali Chowkidar, Fazar Ali and Anwar Ali, and to see whether any cloth stained with blood, *lathi*, &c., and the papers, umbrella, cloth, cap, &c., that were with Ismail Jaigirdar could be found in the houses of the suspected accused. I deputed Krishna Chandra Badra, the head constable, along with the constables, Ramdhun, Gobinda and Nur Mea to make search in the houses of Emdadulla, Abdul Halil, Abdul Hakim, Abdul Karim, Yakub Ali and Aminuddin.

7 A.M. Complainant's house.

6. On arriving at the house of the said Sadek Ali and Aslam who live in the same house, I could not find them, or any of the members of their family. In the presence of the persons noted in the margin and Aslam's father-in-law Meajan I searched the *ghurs*, &c., of Aslam and Sadek Ali, but neither the clothes, &c., that had been with the deceased nor anything else were found.

Between 7½ and 8 A.M., Chur Uria.
1. Abdul Rahim.
2. Nur Mia.
3. Meajan Bepari.
4. Nandabashi Das.
Searched but found nothing.
Accused absent.

7. On arriving at the house of the suspected Osman Ali Chowkidar and his brother Fazar Ali, who live in the same house, I, in the presence of Fazar Ali, Osman Ali, and the persons noted in the margin, searched their *ghurs*, &c., but the papers, &c., that had been with Islam (?) Jaigirdar or anything else were (?) found.

9 A.M., Chur Uria.
1. Nandabasi Das.
2. Nur Mea.
3. Abdul Rahim.
4. Meajan Bepary of Chur Uria.
Searched—no property found.
Accused present.

I talked with Fazar Ali and Osman Ali but nothing could be known leading to success.

8. I arrived at the house of the suspected Anwar Ali, but could not find him or any of the members of his family. In the presence of his neighbours noted in the margin I searched his *ghur*, &c., but the clothes, &c., that had been with Ismail Jaigirdar or anything else were not found.

10 A.M., Chur Uria.
1. Nandabashi Das.
2. Nur Mea.
3. Abdul Rahim.
4. Meajan Bepari of Chur Uria.
Searched. No property found.
Accused absent.

9. The Head Constable Krishna Chandra Bhadra appeared and presented an additional diary relating to the proceedings taken by him, stating that he had searched the houses of the suspected accused Emdadulla, Abdul Halim, Abdul Hakim, Abdul Karim, Yakub Ali and Aminuddin. So I kept the same with this. The head constable could not find any cloths, &c., that had been with the deceased Ismail Jaigirdar or anything else, in the *ghurs* of the said accused persons.

11 A.M., Chur Uria. Houses of the accused were searched, but no property of the deceased were found.

10. I appointed the Head Constable Krishna Chandra Bhadra and the constable Abdul Hamid and Nur Mea to see whether any clue could be had leading to success on taking rounds through the village where the occurrence had taken place.

12 A.M., Chur Uria.

11. I took round through the complainant's house and the village where the occurrence had taken place and inspected roads, *ghats*, jungles and other suspected places, but no sign or anything else leading to suspicion was found.

Between 1 and 4 P.M. Chur Uria.

12. I talked with Nundabashi Das, Nunda Kumar Chakravarti, Abdul Rohim, Miajan Nur Mea, Kalimuddi Bepari, Arsad Mea, Ismail, Dula Mea, Abdul Aziz and others of Chur Uria, but could not get any clue leading to success in connection with the occurrence.

Between 5 and 8 P.M.
Chur Uria.

13. I talked with the deceased's sons Isahak, aged 11 years, and Nural Huq., aged nine years, and came to know that they on hearing the cry of their brother Idris in the morning yesterday went out of their house and saw the corpse of the deceased floating at the *ghat* at the south-western corner of the tank in front of their house, and that they knew nothing about the occurrence.

9 P.M.
Chur Uria.
Complainant's house.
Saw the dead-body floating on the tank's water.

Exhibit 27c.
A. PENNELL,
Sessions Judge.
The 16th January 1901.

14. I talked with the deceased's daughters Meher Abjul and Arfatunnessa, but nothing could be known leading to success in connection with the occurrence.

27th August 1900.
Chur Uria.
Complainant's house.
10 P.M.

15. The head constable Krishna Chandra Bhadra along with the constables Abdul Hamid and Nur Mea appeared and stated that they had made various enquiries on going round through the village of Chur Uria up to this time of this day, but were not successful in any way.

11 P.M.
Complainant's house.

16. The suspected accused Sadek Ali, Aslam, Anwar Ali and Abdul Halim were not found at their homes, nor could it be known where they were. I remain engaged in making enquiries as to where they are and what they are doing as well as in making further enquiries, and I close the diary this day.

12 P.M.
Complainant's house.
Suspected accused Sadek Ali, Aslam, Anwar Ali and Abdul Halim were absent from their homes. Enquiry was commenced for tracing them out.

OSMAN ALI,
Sub-Inspector.

Despatched 28th August 1900, at 11 a.m. from Chur Uria through a person.

File with the diaries.

(Initial illegible).

The 29th August 1900.

EXHIBIT A1.

A. PENNELL,
Judge.

The 16th January 1901.

(Translation.)

SPECIAL DIARY, SECTION 172, C. P. C.

INFORMANT IDRIS.

Case No. 36 regarding accidental death of Ismail Jaigirdar caused by his falling into the water.

Occurrence.—Between 10 a.m. of 25th August 1900 and 6 a.m. of 26th August 1900.

1. The informant, on coming into the station at 9 a.m. of this day, 26th August 1900 stated before the senior sub-inspector of the station that he had seen the corpse of his father Ismail Jaigirdar floating, this morning on the water of the tank to the east and in front of the *daroza* of their house; that he had gone to the town yesterday at 10 a.m. for the purpose of looking after a case in the Court; that he did not know how he had come by his death. This is considered as *itala* (information) No. 36 regarding accidental death: and I am deputed to carry on an investigation in respect of this matter. So, I start for the mofussil with the constables Ramdhone and Gobinda Pali.

Date and hour.
The 26th August 1900, 9 A.M.
At the station.

2. On arriving at the house of the informant at the village of Chur Uria I called the principal men of the village stated in the margin, and in their presence saw the corpse of the deseased Ismail Jaigirdar floating reversed (with face downward) at a

From 11 A.M. to 12 A.M.
Chur Uria.

distance of three cubits to the east from the side of the *ghat* at the south-west corner of the tank to the east of the *daroza* of the informant's house. On bringing up the corpse of the deceased from three cubits of water through Yakub Ali and Jinnat Ali of Dharmapur, and Laskar Ali of Chur Uria I examined it and found that the deceased was aged about 60 years, of dark complexion, with both hands bent upwards, one black *churi* bordered *daoti* of *naensuk* (fine cloth), as wearing cloth, tufted beard, cropped moustaches, the hair whereof being here and there grey, eyes and mouth closed, scars of small-pox on the face, one black mark of abrasion over the socket and of the right eye on the right side of the forehead, one black mark in the middle part of the forehead, and one black mark between both eyes in the middle part of the nose, marks of abrasion below the left eye, below the right eye (and) on both the lips, mark of abrasion on the back of the right ear, white mark of the parting of the skin below the neck on the left side of the breast, nose oozing out water, one mark of abrasion at the joint of the right arm, one mark of swelling on the left side of the spine on the back, one slight mark like that made with some pointed thing in the middle of the waist on the back, and blood mark at the base of the penis. There is also slight mark as that made by some pointed thing at the ankle of the right leg. The palm of the hands and the sole of the feet were stiff. Save and except these no other visible marks and wounds were found. The cause of the death of the deceased could not also be known. Nothing could be positively known how these marks and wounds were caused. I therefore draw out a report of the examination of the dead body on a separate paper, and send to the sudder hospital by a *chalan*, etc., the corpse in a cart through Ramdhone Constable for the examination of the wounds, etc., on the person of the deceased. From the nature of the wound on the dead body (I think) it is not improbable that the deceased died on being wounded by somebody. Accordingly I instructed Ramdhone Constable to take the informant with him and to inform the senior sub-inspector of the circumstances, etc., of this occurrence.

Naimuddi Miji, Mahabbat Ali, Jinnat Ali and Meher Ali of Chur Uria, and Hamidulla of Parun Jagunnath.

3. I engage myself in making a search in the water of the tank where the occurrence took place, in the jungle, and in the dense jungle, etc., in the neighbourhood. I came to know from the informant that the deceased had on his person one white shirt, and one fine white sheet and had also with him one old umbrella with black cloth and eight iron rods.

The 26th August 1900, 9 P.M. Chur Uria.

4. I made a search in the water of the tank where the occurrence had taken place, in the jungle, in the dense jungle close by and in the roads on all sides. There is a road for going to and coming from the house running towards the east through the southern embankment of the tank, where the occurrence took place. A small space of ground at the distance of eight cubits to the east from the spot where the corpse was found at the south-eastern corner of the said tank was a raised one. It has been cut to a depth of two and a-half cubits, levelled with the road on the eastern side of the tank. There were the (following) marks at the said spot :—A human knee-joint mark at 16 *angulis* above the lower ground on the southern side of the road. One mark somewhat larger than the said mark twelve *augulis* above at a distance of six cubits from the said mark towards the west. Two marks of human feet at one place two and a-half cubits above the said road, and a mark like that of a human knee-joint, 12 *angulis* above the road on the northern side, and it was found that two *goada* plants higher up on the southern side had been pressed by human feet. No other marks were found. Accordingly I prepare a map of the said spot. Nothing has been known from enquiry up to this time as to the cause of the death of the deceased. The clothes, etc., which he had with him were not also found out on enquiry. Nor was the result of the examination of the corpse of the deceased received. The distance from the spot where the corpse was found to the *ghur* of the outer apartment of the house of the deceased is 39 cubits. The *basat ghur* lies at a distance of twelve cubits towards the west from the *ghur* aforesaid. I, therefore, remain engaged in carrying on further investigation, and close the diary, this day.

7 P.M. Ditto.

Exhibit a2.
A. PENNELL.
Sessions Judge.
The 16th January 1900.

KRISHNA CHANDRA BHADRA,
Head Constable.

Sent 27th August, 1900, from Chur Uria at 12 a.m. through Emanuddi Chowkidar.

Filed on the 27th August, 1900.

OSMAN ALI,
Sub-Inspector.

Received on the 27th August, 1900, at 5 p.m.

LUKHI KANTA CHUCKERBUTTY,
Writer Constable.

Started 28th August, 1900, 7 a.m.

(Signature illegible.)

A case, No. 13, under Section 302 of Indian Penal Code in connection with this accidental death has been instituted, so two copies of diary in respect of this matter is made over.

KRISHNA CHANDRA BHADRA,
Head Constable,
Sudharam.

The 27th August, 1900.

EXHIBIT A3.

A. PENNELL,
Sessions Judge.

16th January, 1901.

SPECIAL DIARY, No. 2.

(Translation.)

Submitted by Sub-Inspector Osman Ali, dated 27th August, 1900.

1. Complainant came to the station at 9 a.m. of the 26th August, and told me that his father, Ismail Jaigirdar, left home at 10 a.m. on the 25th August, to look after cases in town, but that he did not come back; that on the morning of the 26th he saw his father's dead body floating in the water of the tank at his doorway or *darwaja*. He made a statement saying that he did not know how his father met with his death. I accordingly recorded his statement in entry No. 36, and noted it as a case of accidental death. I deputed head constable Krishna Chandra Bhadra to make an investigation in the case.

29th August, 2 A.M.
Chur Uria.

Yesterday, I went to the Bibir Bazar for searching the shop house of the accused in case No. 12 of the current month, but found it locked and the accused absent. I was informed that the accused had gone to Santoshita Hat, and I did not think it quite proper to break open the padlock and enter the shop in the absence of the accused or anybody on his behalf, so I stationed a constable before the shop of the accused in case No. 12, and sent a man to bring his father. In the meantime I went to the dispensary, in order to ascertain the conditions of Ismail Jaigirdar's dead body in case No. 13 being accidental death No. 36 reported yesterday. When I came back to the station, the complainant in this case made an *ijahar*, saying that it was a case of murder.

ABSTRACT OF THE COMPLAINANT'S STATEMENT.

Yesterday, after the complainant had reported his case as an accidental death, Krishna Chandra Bhadra, of this station, went to his house and took up his father's dead body. It was found that the skin over the left eye had gone, that there were marks of violence on the forehead, and also on both the temples of the head. The complainant, however, failed to give a minute description of the wounds he saw in different parts of the body. He said he could not carefully look into them. From what he had seen he said he suspected that some one must have murdered his father. Sadak Ali (father's name not known to the complainant), and Lukhi Goldhar's son, Aslam of Salia; Hamid Ali's son, Emdadulla; Anwar Ali (father's name not known); Bhola Gazi's son, Abdul Halim, of Chur Uria; Osman Ali, Chowkidar of the *mohalla* and his (Chowkidar's) brother Fazar Ali (father's name not known), and Abdul Hakim (father's name not known), of Chur Uria, and Abdul Karim, also of the same place, had enmity with his father. These men, or some other enemies of his must have, he suspected, murdered his father. The said Emdadulla and Abdul Halim told the complainant to lodge an information at the thana without accusing anybody. At the time his father left home, he had a *bordered dhuti* on his waist, a white shirt on his person, and a white sheet over it. He carried a black umbrella with a bamboo handle. He had papers in the pocket of his shirt, and so forth. When the complainant made this statement, the first information report was used, but I was engaged in the enquiry of case No. 12. I made a search in the house of the accused in that case, and kept in the thana the stolen articles I had found there. I left station again at 12 p.m. accompanied by constables Rajoni Chand, Nur Mia, Ahmad Ali, and Abdul Hamid, and reached the village of occurrence, where I met head constable Krisha Chandra Bhadra, and, after having acquainted myself with the facts he had obtained up to that hour, I took up the enquiry from him.

2. I engaged Constables Rajoni Chand, Nur Mea and Head Constable Krishna Chandra Bhadra to secretly watch the movements of the suspected accused and to ascertain by walking in disguise, whether any satisfactory clue can be obtained in this case.

3 A.M.
Chur Uria.

3. Reached the complainant's house where Head Constable Krishna Chanda Bhadra and the constables accompanying him came and told me that they had gone about the village of occurrence but were unable to find any satisfactory information. I inspected the places mentioned in paragraph 4 of the diary No. 1, viz., the tank where the dead body was found, the spot on the road where there were knee impressions on the ground. I could not find anything more than what was stated in the above paragraph by the head constable. The sketch prepared by the head constable is filed herewith.

6 P.M.
Chur Uria, Complainant's house.

4. Took down the statement of complainant's mother Rokia Banu. In addition to the persons named and suspected by the complainant, she named Johiruddi's son Aminuddi of Chur Uria and Yakib Ali, (father's name not known), living in the same house with him.

6 P.M.
Chur Uria, complainant's house.
Exhibit A4.
A. P. PENNELL,
Sessions Judge.
The 16th January 1901.

5. I proceeded with constables Mahomed Ali, Rajani and Abdul Hamid to search the houses of Sadak Ali, Aslam, Osman Ali Chowkidar, Fazar Ali and Anwar Ali, who have been suspected in this matter and to see whether any blood-stained cloth, *lathies* and papers belonging to Ismail Jaigirdar or his umbrella, cloth, cap, &c., could be found. I deputed head constable Krishna Chandra Bhadra and constables Ramdhone, Gobind, and Nur Mea to search the houses of Emdadulla, Abdul Halim, Abdul Karim, Yakub Ali and Aminuddin.

7 P.M. complainant's house.

6. Arrived at the house of the above-named Sadak Ali and Aslam (they both live in the same house); but could not find them or any other member of their family. Then in the presence of the persons named in the margin and Aslam's father-in-law, Meajan, I made a search in the house of Sadek Ali and Aslam but could find no cloths or other article belonging to the deceased.

7.30 to 8 o'clock A.M. Chur Uria.
1. Abdul Rahim.
2. Nur mea.
3. Meajan.
4. Nanda Basi Das, all of Chur Uria.

7. Arrived at the houses of the suspected accused Osman Ali Chowkidar and his brother Fazar Ali who lives in the same house with him, and searched their house in the presence of the persons named in the margin and the owners, but was unable to find any cloth or other articles belonging to Islam (?) Jaigirdar. I had a talk with Osman Ali and Fazar Ali but could not elicit anything of use from them.

9 A.M. Chur Uria.
The persons named above were also present.

8. Arrived at the house of the suspected accuser Anwar Ali but could not find either him or any other member of his family. I made a search in his house in the presence of his neighbours named in the margin but could not find either cloth or any other article belonging to the deceased.

10 A.M. Chur Uria.
In the presence of the same persons.

9. Head Constable Krisnna Chandra Bhadra came and informed that he had searched the houses of the suspected accused Emdadulla, Abdul Halim, Abdul Hakim, Abdul Karim, Yakub Ali and Aminuddi. In addition to the work he did, he also filed a diary which is put up herewith. He stated that he was unable to find cloth or any other article belonging to the deceased Ismail Jaigirdar in the houses of the above-named accused.

11 A.M. Chur Uria.

10. Deputy Head Constable Krishna Chandra Bhadra with constables Abdul Hamid and Nur Mea to go through the village of occurrence and see whether they could obtain any useful information in connection with the case.

12 A.M. Chur Uria.

11. Walked about the house of the complainant and through the village of occurrence, inspected roads, ghats and jungles and other places but was unable to discover any suspicious article or mark.

1 to 4 P.M. Chur Uria.

12. Had conversations with Nanda Basi Das, Nand Kumar Chuckerbutty, Abdul Rahim, Miajan, Nur Mea, Kolimuddi Bepary, Arshad Mea, Ismail, Dula Mea, Abdul Aziz and others of Chur Uria but was unable to get any clue to the occurrence.

5 to 8 P.M. Chur Uria.

13. Had a talk with the deceased's sons, Isahak, aged 11 years and Nurul Huq, aged 9 years, who both said that in the morning day before, they heard cries of their brother Idris and went out of their house, and found the dead body of the deceased floating at the *ghat* in the south-west corner of the tank in front of their house; but they said they knew nothing more of the occurrence.

9 P.M. complainant's bari Chur Uria.

14. Enquired of the deceased's daughters, Meher Abjan, and Arfatunnessa, but was unable to find anything useful from them.

10 P.M. complainant's house.

15. Head Constable Krishna Chandra Bhadra, Constables Abdul Hamid, Nur Mea came and reported that they had gone about the village of Chur Uria and made various enquiries but no effect.

11 P.M. complainant's house.

OSMAN ALI,
Sub-Inspector.

16. Could not find the suspected accused Sadek Ali, Aslam, Anwar Ali and Abdul Halim in their house; could not know also their whereabouts. I shall enquire where they have gone and for what purpose and make further investigation into the matter. I close the diary for this day.

Exhibit a5.
A. P. PENNELL,
Sessions Judge.
The 16th January 1901.
27th August, 12 P.M. complainant's house.

OSMAN ALI,
Sub-Inspector.

Despatched at 11 a.m. of this 28th August, from Chur Uria through bearer.

(On back in English.)

The sub-inspector must make every endeavour to trace the accused.

W. Y. R.

The 29th August.

EXHIBIT A6.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

TRANSLATION OF THE STATEMENT OF ROKIA BANU BEFORE OSMAN ALI SUB-INSPECTOR.

Statement recorded under Section 161 of Rokia Banu, widow of Ismail Jaigirdar, of Chur Uria, on the 27th August, 1900.

Itlah No. 13.

Idris Mia ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Suspected accused.*

Case under Section 302.

Question: At what hour on Saturday last, your husband left home and for what place? Did he return home that day? *Answer*: Last Saturday at about 14 *ghoris* in the day my husband said that he would go to the Sudharam *cutchery*. Accordingly he started from the house. He said he had a case there. I cannot say what case was it. He did not come back home again.

Q.: When he left home for *cutchery*, did anybody accompany him? What articles he had with him? *A.*: From our house, nobody accompanied him. He took Rs. 6 with him for purchasing cloth? He had a black bordered *dhuti* on his waist and a white shirt on his person and a muslin sheet over it. On his head, he had cap of thin, fine cloth. He carried a black umbrella having a bamboo handle. He had a bundle of papers in the pocket of his shirt. What those papers were I cannot say. He had no other articles with him.

Q.: Do you know anything as to how your husband met with his death? *A.*: On the morning of day before yesterday, Saturday, at the time of saying morning prayers, my son Idris Mea cried out from the *darwaja* of our *bari* in loud voice. "Oh mother, some one has killed my father and thrown his body into the water." Upon this, I with my daughters Meher Abjan and Arfatunnessa went towards our *darwaja* to see what was the matter. I saw there Musa Mea Moulvi, Noimuddi Miji, and 20 or 25 others (whose names I do not recollect) coming to the spot on hearing the cries of my sons and daughters. When we reached the *darwaja* my son Idris told me that my husband's dead body was floating on the water at the *ghat* near the south-western corner of the tank (in front of our *darwaja*). The villagers told me that the body should be taken up after lodging an

information at the Thana. After this, Idris Mea went to the Thana. A Jemadar then came from the Thana and the body was taken up from the water at 12 or 14 *gharis* of the day and despatched to the dispensary. It was my husband's dead body. My neighbours and *ryots* Lukhi Goledar's son Asan, Osman Ali Chowkidar, his brother Fazar Ali, Hyder Ali's son Anwar Ali, Hamid Ali's son, Emdadulla, Monu Khalifa's son Abdul Karim, Yakub Ali, Abdal Hakim, (father's name not known), Sadek Ali, Bhola Gazi's son Abdul Hakim, and also my neighbour Johuruddi's son Aminuddi, had enmity with my husband on various account. I suspected that they must have killed my husband. There was a storm shortly before sunset on that Saturday. It was over a little before midnight. I was awake and was waiting for my husband till midnight. After that hour, I thought my husband would not come on account of the storm as the night was dark. I thought he must have stayed at the house of some one. I then fell asleep and do not know what happened next. Many others had also enmity with my husband, but I do not suspect only those already named. I believe my husband was seized and killed by the enemies on his way back from the town in the darkness of night and then his body was thrown into the tank. I do not know if anybody saw the occurrence. The said Yakub Ali, Aminuddi and Abdul Hakim live in the same house.

Q.: Was your husband suffering from any disease? *A.*: No.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A7.

A. P. PENNELL,
Sessions Judge.

The 16th January 1901.

EXHIBIT A8.

ADDITIONAL DIARY WRITTEN BY KRISHNA CHANDRA BHADRA, DATED THE 27TH AUGUST, 1900.

Filed 27th August, 1900.

OSMAN ALI,
Sub-Inspector.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Itla No. 13, 26th August 1900, 7½ p.m. to 8½ a.m., 25th August 1900, from 10 a.m. to 26th August 1900, 6 a.m.

1. A complaint having been lodged in connection with the death of Ismail Jaigirdar entered in No. 36 as a case of unnatural death, saying that it is suspected that he was murdered by Sadak Ali and others, the senior Sub-Inspector of the station, came to the place of occurrence to investigate the matter and I acquainted him with all the circumstances of the occurrence.

27th August 2 A.M., Chur Uria.
Exhibit A8.
A. P. PENNELL,
Sessions Judge.
The 16th January 1901.

2. The senior Sub-Inspector deputed me and Constables Rajani Chand and Nur Mia to watch the movements of the suspected accused and to secretly go about the place and see whether any useful information could be obtained in the matter. I accordingly took up the work.

3 A.M.
Chur Uria.

3. Up to this hour, I secretly walked with the suspected persons making various enquiries, but I was unable to find any clue. I reported this to the Sub-Inspector.

6 A.M.

4. Being entrusted with the work of searching the houses of the suspected accused, Emdadulla, Abdul Halim, Abdul Hakim, Abdul Karim, Yakub Ali and Aminuddi, I start for their houses with Constables Ramdhone, Gobind and Nur Mia.

7 A.M.

5. Having arrived at the house of suspect Emdadulla, I found him and made a search in his house in the presence of himself, his father and the persons named in the margin, but could find neither cloth nor any other article belonging to the deceased.

7.30 A.M.
1. Fazlar Rahaman.
2. Mahomed Hossain.
3. Nand Kumar, Chuckerbutty, all of Salla.

Had also a talk with the suspected accused Emdadulla but was unable to elicit any useful information from him.

6. With the persons accompanying me, I arrived at the house of the suspected accused, Abdul Hakim, whom I met, and then regularly searched his house with Constable Nur Mia in the presence of the persons named in the margin, but could find neither cloth nor any other article belonging to the deceased. Had conversation with Abdul Hakim but could elicit no information from him.

8 A.M.
1. Fazlar Rohaman.
2. Mahomed Hossain, of Chur Uria.
3. Nand Kumar Chuckerbutty, of Uria.

7. Met Abdul Karim and searched his house in the presence of the above-named persons but to no effect. Had conversation with the suspect Abdul Karim, but could elicit no information from him.

8.30 A.M., Chur Uria.
In the presence of the above persons.

8. Reached the house of Abdul Abdul Hakim, but could not find him; searched his eastern (*bhiti*) house in the presence of his father-in-law, Yakub and the persons named above but to no effect.

9 A.M., Chur Uria.
In the presence of the same persons.

9. Reached Yakub Ali's house and met Yakub Ali, then made a search in his house in his presence, and in the presence of the persons named in the margin, but to no effect. Had a talk with Yakub Ali, but could elicit no information from him.

10 A.M., Chur Uria.
1. Abdul Rahim.
2. Amjad Bepari.
3. Nur Buksh, of Salla.

10. Met the accused Aminuddi and searched his house in the presence of the above-named persons, but to no purpose. Had conversation with Aminuddi, but could elicit no information from him.

10 A.M., Chur Uria.
1. Abdul Rahim.
2. Amjad Bepari.
3. Nur Buksh, of Salla.
In the presence of the said persons.

11 A.M.
Chur Uria.

11. Went to Sub-Inspector and told him the result of my enquiry till then.

12 A.M.
Chur Uria.

12. Still remain engaged in the case by order of the Investigating Sub-Inspector, made further enquiries, but to no effect. Here I close the diary for the day.

KRISTO CHUNDER BHADRA,
Head Constable.

EXHIBIT A9.

SPECIAL DIARY No. 3, SUBMITTED BY OSMAN ALI, DATED THE 28TH AUGUST, 1900.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

No. 13, dated 26th August 1900, from 7½ p.m. to 8½ p.m.

Occurrence took place between 10 a.m. of 25th August and 6 a.m. of 26th August 1900.

1. A letter was received intimating me that the district superintendent of police will reach this morning the place of occurrence in this case; and so I stayed in the house of the complainant awaiting his arrival from the morning. The District Superintendent came to the complainant's house at 8 a.m., and I showed him the spots where the deceased's dead body was found in the tank and also the tank and its embankment and those places on the road where the impressions caused by the knee of the deceased were found and also other places. The District Superintendent had a conversation with the complainant, his mother, Rokia Banu, and the suspect Osman Ali Chowkidar, and then signed the Diary No. 2 submitted by me yesterday, and also the statement of Rokia Banu. In addition to the facts she stated before me, Rokia Banu, widow of the deceased, stated further before the District Superintendent that the accused, Osman Ali Chowkidar, had offered the deceased Rs. 4 for rent at his (deceased's) mosque at the time of saying prayers on Friday; but the deceased told the Chowkidar that as he, Chowkidar, had realized the Chowkidari tax last year by attaching his (deceased's) properties the deceased also in his turn would not accept rent without similarly attaching his (Chowkidar's) properties. It also appeared from her statement that the deceased had instituted rent-suits against Anwar Ali, Aslam, and Korim Buksh. But when the District Superintendent asked Osman Ali Chowkidar about this rent affair, he denied having any quarrel with the deceased in connection with it This suspected accused further stated that on the morning of Saturday last he went to the market at Shudharam for selling milk with his neighbours Aminuddi and Aku, and that he returned home with them at 12 or 1 o'clock of that day.

28th August 10 A.M.
Complainant's house.

Exhibit A9.
A. P. PENNELL,
Sessions Judge.
The 16th January 1901.

On being asked by the District Superintendent, the complainant stated that the suspected accused Emdadulla and Abdul Halim took him in the morning following the day of occurrence from his house to the town for reporting the death of his father and that they also accompanied him even to the Thana. It should be noted here that, as a matter of fact, I saw two or three other men in the company of the complainant at the thana, but I took these men to be outsiders and so turned them out at the time. I recorded the statement of unnatural death. I have not till now seen Emdadulla and Abdul Halim. These men were not known to me before; but if I see them, I shall most probably be in a position to say whether they were really present at the time with the complainant.

When questioned by the District Superintendent, the widow of the deceased stated that the suspected accused and other *ryots* had used to come occasionally to the house of the deceased, but that she could not say whether any of these men came to his house on Saturday last.

Having finished his work and given me instructions for making enquiries in different ways, the District Superintendent left for the Sudder Office at 10 o'clock. At the time of his leaving he went to the house of Aslam and Sadak Ali (who both live in the same house), but could meet none of them.

2. Mahomed Ali Constable said that a bearer residing in Mouzah Kallanbhanga had told him that the deceased while proceeding homeward was met in the evening of Saturday last by one Abdul Aziz Constable, of Chur Uria, near the house of Asadulla, of Salla. This constable, it appeared, came from Tipperah and was staying at his home on leave. Constable Mahomed Ali was ordered to go and bring this constable.

11 A.M.
Chur Uria.

3. Naimuddi Miaji, his son Musa Mia, Moulvi Abdul Aziz and his neighbour Belu Mia (all of whom are neighbours of the complainant and the accused), being questioned denied having any knowledge of the occurrence. They only said that on hearing the cries and lamentations in the house of the complainant on Sunday last, they went from their home and found complainant's dead body floating in the tank in front of the complainant's house; that the complainant (deceased ?) was a litigious person and had lawsuits against a number of men, that they (deponents) were not on friendly terms with the accused and that they believed that he was murdered by some of his enemies. Constables Gobind and Ramdhone sent back to station.

12 A.M.
Chur Uria.

4. Till now no useful information has been obtained. I deputed Head Constable Krishto Chunder Bhadra and Constables Abdul Hamed and Nur Mia to secretly make enquiry in this case.

1 P.M.
Chur Uria.
Exhibit A11 (?).
A. P. PENNELL.
Sessions Judge.
The 16th January 1901.

5. Mahomed Ali Constable brought in Abdul Aziz Constable, who, being asked, stated that at about 7 o'clock in the evening of Saturday last, he found Elahi Buksh, son of Asad Molla, engaged in talking with the deceased on the public road at the *darwaja* of Asad Molla, of Salla, when Constables Abdul Aziz and Ahmadulla, son of Tamizuddi Munshi, of Chur Uria, joined them. These two men were also coming from Sudharam. It was dark and raining at the time. Elahi Buksh entreated the deceased to stay at his house for the night; but the deceased said that he had so many enemies that he could not keep away from home at night; so saying the deceased hastened towards home. Elahi Buksh then took hold of his hands and pressingly asked him to stay: but the deceased told him not to pull his hand lest the cloth he had under his arm fell down. When Abdul Aziz saw the deceased walking fast towards his home, he asked him to walk slowly, telling him that he and others were also going with him. In reply to this the deceased said that he had no one in his house and so he must walk fast; that so saying the deceased walked as fast as he could; that the deceased had no shirt on; that he had only a sheet on; that he carried a black umbrella over his head; that they were following him; that they saw him turning from the public road to the village road near the house of Amanuddi Sepoy, east of Kalabhanga tank. The Constable further said that the deceased had many enemies, and he believed that he was killed by some of them. The house of that Constable Abdul Aziz is at a distance of about half a mile, but he said he had no sort of connection with him.

28th August.
3 P.M.
Chur Uria.

6. Imamdi Chowkidar has been sent to bring the above-named Elahi Buksh and Ahamadulla Constable.

4 P.M., Chur Uria.

7. Walked about the village of occurrence, but could not find any article or any useful information anywhere.

4 P.M. to 7 P.M.

8. Imamdi Chowkidar came and reported that he could not find Ahamadulla and Elahi Buksh; but he was again told to bring them.

8 P.M., Chur Uria.

9. Head Constable Kristo Chunder Bhadra, accompanied by his constables, came and reported that he could not find any useful information. I remained at the village of occurrence for the day, and closed the diary.

10 P.M. Chur Uria.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A12.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

Despatched 29th August, 3 p.m. From town per bearer.

EXHIBIT A13.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY NO. 4 SUBMITTED BY THE SUB-INSPECTOR, OSMAN ALI, DATED THE 29TH OF AUGUST, 1900.

7 A.M. Chur Uria. I, Imamdi Chowkidar, come in with Elahi Buksh and Ahamudullah.

2. These men were questioned, and the answers they gave tallied with those given by the Constable Abdul Aziz, recorded in paragraph 5 of Diary No. 3. These men said that they had no connection with the deceased. Ahmadullah's house stands at a distance of a mile and a half to the west of the house of the deceased; and Elahi Buksh's house stands towards the north-east corner at a distance of one mile. It has been already recorded that Abdul Aziz's house is ($\frac{1}{2}$) half a mile away from the house of the deceased. There seems to be no reason to disbelieve these men. From the circumstances, it is evident that the occurrence took place during Saturday night after daylight. Henceforth, the night of occurrence will mean Saturday night.

Ditto.

3. Nundabasi Das, of Chur Uria, who comes to me of his own accord, being asked, said that he knew nothing of the occurrence, but that he was told by Umar Ali, Umed Ali, and others, of Salla, that they met with the deceased on the road at seven o'clock on the night of occurrence. Hasan Ali Chowkidar was sent to bring these men.

8 A.M. Chur Uria.

4. Hasan Ali Chowkidar comes with Umar Ali and Umed Ali. They, being questioned, Umar Ali states that at seven o'clock on the night of occurrence he met the deceased on a culvert on the the public road in the east of Utshaba tank. The deceased was then going towards his home. Umed Ali says that he met the deceased at the same hour at the north-west corner of the above tank. He, too, saw the deceased going towards his home. These two deponents said that they both saw the deceased with (plain) shirt and a white sheet on, carrying a black umbrella over his head.

10 A.M. Chur Uria.

5. Osman Ali Chowkidar has been told to see whether the accused are at home or not.

10 A.M. Chur Uria.

6. Osman Ali Chowkidar having brought in the suspected accused, Sadak Ali and Aslam, I had a talk with them, but I could not elicit any useful information from them. I told these men and Osman Ali Chowkidar to tell the other suspected accused to come and see me, in case they happened to meet them.

11 A.M. Chur Uria.
(In English).

The Sub-Inspector should have recorded their statements under Section 161, Criminal Procedure Code. W. Y. R.
The 31st August.
P. sent. W. Y. R.

7. It appears from the statement of the widow of the deceased that the deceased had taken money from home to buy cloth, and also it appears from what Abdul Aziz (constable), Elahi Buksh, and Ahmadulla had said, that the deceased had some cloths with him. To ascertain whether the deceased purchased cloth from Sudharam market, and whether he had any other man in his company, and particularly to inform the District Superintendent and also the Inspector Babu all about the case, I start for the

12 A.M., Chur Uria.

Sudder Station with the Constables Abdul Hamid and Rajani, leaving Head Constable Kristo Chunder Bhadra and Constables Ahamad Ali and Nur Ali at the place of occurrence.

8. Having reached town, visited several cloth-shops, but could not ascertain whether the deceased purchased any cloth from any shop, or whether he had any other person in his company.

From 2 P.M. to 4 P.M., Town.

9. Met the Inspector Babu at the Thana, and told him all about the case.

4 P.M., Station.

10. Informed the District Superintendent of Police all about the case, and having finished my meal, prepared myself to start back for the place of occurrence. Though it is necessary to ascertain, by enquiry at the town, whether the complainant went to the lodging-house of the *mokhtar* Ashruf Ali accompanied by the suspected accused, Emdadullah and Abul Halim, whether they had any conversation with the *mokhtar*, whether the deceased went to any other pleader or *mokhtar's* lodging or attended the Bhulua cutchery on Saturday last, and also against whom the deceased had law suits ; still, I cannot but go to the place of occurrence. I keep all these for future enquiry, thinking it is more proper for me now to start for the place of occurrence.

5.30 P.M., Station.

11. Accompanied by two constables, I leave for the place of occurrence.

7 P.M., Town.

12. Having reached the place of occurrence, stayed there. I gathered from the Head Constable that nothing now has been discovered since I left the place.

9 P.M., Chur Uria.

13. No useful information has been received till now. I, accordingly, close the diary for the day.

12 P.M. Chur Uria.

OSMAN ALI,
Sub-Inspector.

Despatched 30th August, 1900, 1 p.m. from Chur Uria through a man.

EXHIBIT A14.

A. P. PENNELL,
Session Judge.

The 16th January, 1901.

EXHIBIT A15.

SPECIAL DIARY, NO. 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of 1st Information Report.—No. 13, dated the 26th August, 1900, at 7.30 p.m. to 8.30 a.m.

Occurrence.—Between the 25th August, 1900, 10 a.m., and 26th August, 1900, 6 a.m.

Date and hour.—30th August, 1900.—6 a.m., Chur Uria.

No. 1. Osman Ali Chowkidar produced the suspected defendants, Emdadullah, Sadek Ali, Aslam, Fazar Ali, Anwer Ali, Abdul Halim, Abdul Karim, Yakub Ali, and Abdul Hakim. Upon a close observation of these persons, I fully remember that I saw the aforenamed Abdul Halim and Emdadulla in the company of the complainant when he lodged information about the unnatural death. I talked to each of them separately, and to all of them together, but without any effect ; only that Emdadullah and Abdul Halim admitted that they had accompanied the complainant, and had been to the lodging of Mukhtar Asraf Ali. They did not admit, however, that they had instructed the complainant to say that he entertained no suspicion about the death of his father. They say that the complainant being their neighbour and merely a boy, they had accompanied him to the town.

The Sub-Inspector does not seem to have questioned the accused as to the actual occurrence or whether they were present. The Inspector must see that important points are made quite clear.

W. Y. R.

The 1st September.

2. The suspected Emdadulla says that he is a tenant of the deceased; that the deceased sued him for rent some five or seven years ago; that he came to the house of the deceased on Sunday morning on hearing some noise, and saw the dead body of the deceased floating on the surface of water.

They say they know nothing.

The defendant, Juman Ali Chowkidar, says that he and his brother, Fazir Ali, cultivate 12 gundas of land belonging to the deceased. They are *jotedars* paying a rent of Rs. 5, of which a rent of Rs. 4 remains unpaid, and I came to the house of the deceased on Sunday morning on hearing some noise, and saw the dead body of the deceased floating on the surface of water.

Ditto. Ditto.

The defendant, Abdul Halim, says that there existed no enmity between himself and the deceased, Ismail Jaigirdar; that Ismail Jaigirdar had purchased a four annas share of his house; that the said Jaigirdar once brought a case of assault against him, which was dismissed; that in the morning of Saturday last, he came to the complainant's house on hearing cries of lamentation, and saw the dead body of the deceased floating in the tank in front of the complainant's house at the *ghat* at the south-west corner of that tank; and that the wife of the deceased told him that the deceased was suffering from nervous disease, and that it was probable that his head turned, he fell into the water and died.

The defendant, Sadek Ali, says that he is a tenant of the deceased, and he owes a rent of Rs. 7–8 annas for the current year; that 12 or 14 years before the deceased had once sued him for enhancement of rent and brought a case of assault against him; and that on Sunday morning he had gone to town to sell milk.

The Defendant, Aslam, says, that he is a *ryot* of the deceased; that the deceased once sued him for rent; and that on Sunday morning he came to the house of the deceased on hearing a noise, and saw the dead body of the deceased floating on the water.

The defendant, Anwar Ali says, that he is a *ryot* of the deceased; that the deceased brought a rent-case against him, in which he has filed an answer; and that on last Sunday morning he went to work, and did not see the dead body.

The accused, Fazar Ali, says that he and his brother, Osman Ali Chowkidar, cultivate 12 gundas of land belonging to Ismail Jaigirdir and owe Rs. 4 on account of arrears of rent; and on coming to the complainant's house after hearing a noise on Sunday morning he saw the dead body of the deceased floating on the surface of water.

The accused, Abdul Halim, says that on Wednesday preceding the day of occurrence he had gone to Bhavanigunge in connection with his practice as *kabiraj* (native physician); that three or four years ago the deceased brought a case of assault against him and Abdul Halim, Abdul Karim and Sadek Ali, which was dismissed; and that he returned home on Monday last. Abdul Karim, defendant, says that three or four years ago Ismail Jaigirdar brought a case of assault against him and Abdul Halim, which was dismissed; that in the morning of Sunday last, he went to the complainant's house on hearing a noise, and saw the dead body of the deceased floating on the surface of water.

Exhibit A16.
A. PENNELL,
Sessions Judge.
The 16th January 1901.

The defendant, Yakub Ali, says that Ismail Jaigirdar is the brother of the accused Abdul Hakim, that about three or four years ago, the deceased brought a case of assault against him and Abdul Hakim, which was dismissed, and that he went to the complainant's house in the morning of Sunday last on hearing some noise, and saw the dead body of the deceased floating on the surface of water.

The accused, Aminuddi, says that his house was mortgaged to Ismail Jaigirdir, that Ismail had it sold by auction in execution of his decree for debts and purchased it himself, that he having cut a tree from that homestead, Ismail Jaigirdar brought a case against him, in which he was fined Rs. 15, but the fine was remitted on appeal, and that in the morning of Sunday last when he came to the complainant's house on hearing some noise, he saw the dead body of the deceased floating on the surface of water.

9 A.M. to 11 o'clock, Chur Uria.

3. I conversed with all the above-named accused together, but without any effect.

4. The Divisional Inspector arrived for supervising the proceedings in this case. I shewed him the place, &c., where the dead body was found.

11 A.M., Chur Uria. Arrival of the Inspector Babu.

5. I conversed with Miajan Bepari, Abdul Rahim, Umar Jan, Fuzlar, Rohoman, Abbas Ali, Keramut Ali, Abdul Aziz, Naimuddi Miji, Nur Mia, Musa Mia Moulvi, Amir Ali, Maslim, Arshad Mia, Ala Mia, Summad Ali, Roshon Ali, Abdul Salam, Yakub Ali, Abdul Karim Miaji, Rahim Buksh, Keramut Ali No. 2, Mahomed Kamin, Luskar Ali, Romzan Ali Khalifa, Sadek Ali Mia, Bukshi Farazi, Kala Mia, Arshad Mia, Ismail Mia, Ershad, Abdul Latiff Chaprasi, Asrap Ali and Amir Khan of the village of occurrence, but got no useful information from them. They do not suspect the defendants to be the cause of the occurrence. The above-named Luskar Ali, Romzun Ali Khalifa, Sadek Ali Mia, Bukshi Farazi, Kala Mia, Asad Mia, Ismail Mia, Ershad, Abdul Latiff Chaprasi, Asraf Ali and Amir Khan did not see the dead body of the deceased. The remaining persons named

12 A.M. to 4 P.M., Chur Uria.

above saw the dead body of the deceased floating on the surface of water near the *ghat* at the south-west corner of the tank in front of the eastern *daraja* of the house of the complainant, in the morning of Sunday last. They pointed out the said *ghat*. The *ghat* consists of seven logs of cocoanut wood used as steps. People use the water of the said tank by the said *ghat*.

5 to 6 P.M., Chur Uria.

6. I conversed with the deceased's sons-in-law, Oliulla and Yakub Ali, and *Baibahik* Tajuddi Khalifa, Mirjani Jagirdar, and the complainant about the occurrence, but without any useful result.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A17.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

30th August 1900, 7 to 11 P.M., Chur Uria.

7. I roved incognito in the village of the occurrence making various enquiries, but without any success.

11 P.M., Chur Uria.

8. I undertake to make further inquiry. I close the diary for the day.

OSMAN ALI,
Sub-Inspector.

Despatched from Chur Uria at 4 p.m., dated the 31st August, 1900.

Let a *purwana* issue for insertion of the hour and date of the return of the Divisional Inspector from the place of occurrence. Dated the 11th September, 1900.

W. Y. R.

EXHIBIT A18.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

Idris Mea ... ... *Complainant*,

versus

Sadek Ali and others... ... ... *Suspected Defendants.*

Section 302, Indian Penal Code.

Number and date of 1st Information Report.—No. 13. The 26th August 1900 from 7½ p.m. to 8½ p.m.

Date of occurrence.—From 10 a.m. the 25th August 1900, to 6 a.m. the 26th August 1900.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, etc. Section 169, Criminal Procedure Code.—

Date and hour 6 A.M. The 31st August 1900. Chur Uria.

1. The Divisional Inspector having expressed his desire to converse with the village *punchayet*, the people of the village and with the defendants, I send Mirun Daffadar for bringing the *punchayets* into attendance.

7 A.M. Ditto.

2. I depute the Constables Nur Mia and Abdul Hamid for bringing into attendance the people of the village, the suspected defendants, and the men of the the neighbouring villages.

8 A.M. to 11 A.M. Ditto.

3. I, and the Head Constable, Christo Chunder Bhadra together with the Constables Mahomed Ali and Rojoni roamed about in the village and in the neighbouring villages and made inquiry both secretly and openly, but could not obtain any clue, or gather any information as to how, where, and by whom was the deceased murdered.

4. Tuku Munshi, Owali Bepari Punchayet, Miajan Bepari, Abdul Rohim, Omarjan, Fazlu Rahman, Abbas Ali, Abdul Aziz, Nymuddi Miji, Nur Mia, Musa Mia, Moulvi Ramzan Ali, Ameer Ali, Moslim, Arshad, Ala Mia, Samud Ali, Roshan Ali, Abdul Selam Miji, Yakub Ali, Abdul Karim, Rohim Buksh, Asruf Ali, Keramut Ali, and others of the village having appeared, the Inspector had a talk with them on various points connected with the occurrence. But nothing transpired leading to the detection of the offender or giving any information over and above particulars these persons had stated before.

12 A.M. to 2 P.M.
Chur Uria.

5. The Punchayet Mahomed Amjad Mia, Ram Cumar Das, Wajuddi Khalifa, father-in-law of the son of the deceased, Mirza Ali Jaigidar, Oliullah, son-in-law of the deceased, Yakub Ali, Keramat Ali, son-in-law of the brother of the deceased, and the suspected defendants Sadak Ali, Osman Ali Chowkidar, Furzan Ali, Yakub Ali, Imdadulla, Anwar Ali, Abdul Halim, Abdul Hakim, Aminuddi, Abdul Karim and Aslam—all these persons having appeared, the Inspector Babu held conversation with them. The defendants as before denied all knowledge of the crime and stated that they knew nothing as to where the deceased was murdered and at what time, for what reason and by whom.

The 31st August 1900.
From 3 P.M. to 6 P.M.
Chur Uria.

6. So far as the inquiry has been made, I have not received either any direct evidence or any circumstantial evidence as to where the deceased was murdered, and by whom, for what reason and at what time. There being enmity between the deceased and some people of the village and there having been carried on a long course of litigation between the villages and the deceased, it is probable that the deceased was murdered by these persons. But the people of the village have entered into such a combination that nothing can be gathered from them, nor is there any hope that they can be made in a short time to give any information on the subject. However, I will try to the utmost of my power to make the inquiry and to arrest the person really guilty.

7 P.M.
Chur Uria.

7. I with (one word illegible) roam about in the village where the occurrence took place and conversed with several men, but I have not been able to get any information from any person that might afford a clue. I therefore engage the Constables Nur Mia and Abdul Hamid to hold inquiry in private, while I myself remaining engaged in making inquiry into the other particulars—close the diary for to-day.

From 8 P.M. to 10 P.M.

Despatched—the 1st September 1900, at 2 p.m. from the town by a messenger.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A19.

A. PENNELL,
Sessions Judge.

The 16th January 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

Idris Mea ... ... *Complainant,*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of first information report.—No. 13—laid at 26th August 1900, from 7½ p.m. to 8½.

The occurrence took place.—Between 25th August 1900, 10 a.m. to 26th August 1900, 6 a.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, etc.—Sections 169, Criminal Procedure Code.—

Date and hour—1st September 1900, 6 a.m. Chur Uria.

1. I depute Constables Nur Mia and Abdul Hamid to inquire whether the deceased after coming to the town on the day of the occurrence consulted any pleader or *mukhtear* and against what persons he instituted suits for recovery of rent, whether he went to the *cutcheri* of his landlord, the zemindar of Bhulua, etc., whether there was any person accompanying him, and on other similar subjects, as well as to inquire whether the

suspected defendants or any of their relatives, after the occurrence, consulted any pleader or *mukhtear* of the town and instructed these Constables to go to the headquarters for informing the District Superintendent of the particulars of the occurrence, and to hold a secret inquiry at the village where the occurrence took place, and I depute the Head Constable, Kristo Bhadra for making inquiries in the neighbouring villages.

2. After arriving at the *cutcheri* at Bhulua I had a talk with Babu Bussunt Kumar Sen, *mukhtear* and Nobo Kumar Pal, *mohurir* of the said *cutcheri* and with other persons. But it does not appear that the deceased Ismail Jaigirdar had gone to the *cutcheri* at Bhulua on last Saturday.

9 A.M., in the town at the Bhulua Cutchery.

3. I held conversation with the *mukhtears* Moulvi Abdul Aziz and Munshi Asruf Ali and I learnt that on Sunday last in the morning at about 8 a.m., the son about 16 or 17 years old (whose name was not known) of Ismail Jaigirdar with three other persons (name not known) accompanying him, had gone to them and stating that the dead body of Ismail Jaigirdir was floating on the water of their tank, asked their advice as to what statement they would make (to the Police). Upon this the two muktears advised them to make a true statement. But they did not remember whether the persons who were accompanying the said son spoke anything.

10 A.M., Munder Khola in the Town.

4. I roved about in the town and made inquiries; but I could learn nothing as to whether on Saturday last any person came with the deceased from the house to the town or whether when the deceased returned home from the town there was any person accompanying him.

From 11 A.M. to 4 P.M., in the Town.

5. I made known this much of the result of the inquiry to the District Superintendent of Police and to the Divisional Inspector.

5 P.M., in the Town.

6. It appears that the Pleader Babu Kali Cumar Dass has gone to Lukhipura on some important business. On asking his Mohuirir Girish Chunder Aich, I learned that he saw Ismail Jaigirdar up to 5 p.m. on the aforesaid Saturday at the *cutchery*, looking after the rent-suit brought by his wife against Karim Buksh but he did not know where he (the deceased) afterwards went and whether he had any other person accompanying him.

7 P.M., in the Town.

7. From the enquiry carried on up to the present time it appears that the deceased on the day of the occurrence came to the town for looking after a civil suit, and after doing the work connected with the said case up to 5 p.m. in the town, went back in the direction of his home, and that Ilahi Buksh and others saw him at 7 p.m., at a place lying to the north-east of his house, at a distance of about one mile therefrom, and that on the day following in the morning his dead body was found in the tank lying to the east of his house. Hence it may be inferred that he was murdered at some place in the way leading from the house of Ilahi Buksh to his own house. He had several enemies in his own village and in the neighbouring villages, and he was extremely fond of litigation, so much so that at times he used, at his own expense, to assist persons in getting up cases against their neighbours and to manage the cases himself. The deceased was about 60 years old. It does not appear from the statement of any person that he had any love intrigue with any woman and that he was murdered on that account. Nor does any person say that he used to commit any offences such as the theft, &c., and no one conjectures that he was killed in committing such offences. There was heavy downpour of rain in the night of the occurrence, and the wind was very high. The night was extremely dark. It may, therefore, be reasonably inferred that he was murdered by his enemies in the way at the aforesaid time while he was going home. Under such circumstances there is, very little expectation of getting any eye-witnesses to the said occurrence; and so long as any person of his own accord does not give out the real facts, there is no hope of obtaining any clue. However, I represent the proceedings held by me to-day in this diary, while trying to set forth the real state of things to the utmost of my power, and remaining watchful to discover and arrest the person who has committed the crime.

8 P.M., in the Town.

Exhibit A20.
A. PENNELL,
Sessions Judge.
The 16th January 1901.

OSMAN ALI,
Sub-Inspector.

Despatched 2nd September, 1900, 1 p.m., from Chur Uria by a messenger.

EXHIBIT A21.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY. SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

District Superintendent of Police.
Received
The 4th September 1900.
* NOAKHALI.

W. Y. R.

No. 8.

Idris Mea ... ... *Complainant,*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

No. and date of 1st Information Report.—No. 13, the 26th August 1900—7½ p.m. to 8½ p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.—

Occurrence.—Between 10 a.m. of 25th August, 1900, and 6 a.m. of 26th August, 1900.

1. After having stated the detailed circumstances of this occurrence (case?) in the Special Diary No. 7, I, with (my) subordinates, made, during the night various enquiries secretly and in disguise in the village in which the occurrence took place and in the neighbouring villages; but to no effect. An account of this day's proceedings is given *seriatim*.

Date and hour—2nd September 1900, 7 to 10 A.M., Chur Uria.

2. I roamed about in the fields and entered into conversation with certain *rakhals* (cow-herds). Except the fact that they had heard of the deceased having been murdered, no information fit to give a clue was obtained from any one.

Ditto.

3. By conversing with Ala Bux, Atar Ali, Wasin, Emdadulla and Meher Ali of the village of occurrence, I could not obtain any information as to where and by whom the deceased was murdered.

Ditto.

4. I made enquiries of the wives of the neighbours of the deceased suspected as accused, viz., of Hazra Khatun the wife of Abdul Halim, of Khatija Banu the wife of Abdul Halim, of Sumrut Banu the wife of Aminuddi, of Hazra Khatun the wife of Yakub Ali, of Abida Khatun the wife of Abdul Karim, of Syeda Khatun the wife of Emdadulla, of Asmuturunnessa (the wife of) Osman Ali Chowkidar, of Rokia Banu the wife of Fazar Ali, of Asad Banu the wife of Sadak Ali, and of Atar Banu the wife of Aslam: but could not obtain any information fit to give a clue for the investigation of the occurrence. From the wives of Aslam and Sadak Ali I learnt that they had gone to their respective paternal homes two or three days before the occurrence. From Abdul Halim's wife I learnt that before the occurrence her husband went towards Kalna and Baligunge to practice as Kabiraj and that he came back home two days after the occurrence. The other suspected persons appeared to have not been absent from their respective houses on the night of the occurrence.

From 11 A.M. to 1 P.M., Chur Uria.

5. I made enquiries of Hossein Banu the wife of Meher Ali, Sabar Banu the wife of Abdul Rahaman, Hasan Banu the wife of Wali, Nur Banu the wife of Karim Bux, Lachma the wife of Abu Khalipha, Akima Khatun the wife of Ebrahim Chaprasi, Saheb Banu, the wife of Hamed Mia, Akima, the wife of Alimuddi and Khosh Banu, the wife of Afsaruddi, (all) of the villiage of occurrence; but to no effect.

From 2 to 4 P.M., Chur Uria.

6. Learning that a *hât* named Peshkar's *hât* is held to-day in the village of Salla very near the village of occurrence and that many people of the place and of the neighbouring villages have come there, I went to the said *hât* and conversed with Shashi Kumar Seal, Kebal Krishna Seal, Kali Kumar Seal, Mokim Chaprasi, Ram Gopal Shaha, Abdul Majid, Atar Ali, Amjad, Ahamad Ali, Umed Ali, Ismail, Chand Mia, Second Ahmed Ali, Jitu Mia, Chowdhry and various other people of Salla, but obtained no information. I therefore close the diary for this day, engaged in the investigation with the accompanying constable, &c.

From 5 to 8 P.M. Salla, Peshkar's *hat.*

OSMAN ALI,
Sub-Inspector.

Despatched from Chur Uria by a man at 12 a.m., on 3rd September, 1900.

EXHIBIT A22.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

District Superintendent of Police.
Received
The 4th September 1900.
NOAKHALLI.

W. Y. R.

No. 9.

Idris Mea ... ... *Complainant,*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, dated 26th August, 1900, filed between 7½ p.m. and 8½ p.m.

Names of persons arrested and sent up.

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.—

Occurrence.—Between 10 a.m. of 25th August, 1900, and 6 a.m., of 26th August, 1900.

1. A detailed account of the investigation into this occurrence has been given in yesterday's Special Diary No. 8. The men who had been employed to make enquiries in secret and in disguise during the night, state that they had not obtained any important information. The various enquiries made this day while roaming about, have been to no effect.

Date and hour.—3rd September 1900. From 7 to 10 A.M., Chur Uria.

2. Hasan Ali Chowkidar of the Village of Salla and Miron Dufadar of the said beat, who are very cunning and clever men, are appointed to make secret enquiries after being told that if they could give such information as would lead to the arrest and punishment of the real culprit, they would be given special rewards, and that if any other person should be able to give such information they would also be rewarded.

From 7 to 10 A.M., Chur Uria.

3. I employed myself as well as the constables, Rajoni Chand, Mahommad Ali and Gobind Pani (?) in enquiring if any one of the residents on both sides of the road through the village of Salla and the road by the Kallabhanga *dighi* leading from the town to the house of the deceased, or any other person, knows about the passing of the deceased, or where and under what circumstances he was murdered; and first made enquiries of Daemulla Sadagar, Duna Miah, Roshan Miah, Abbas Ali, Hamid Ali, Aslam, Mokim, Jamu Munshi and other residents on both sides of the Salla road, but nothing of use came out.

From 12 A.M. to 3 P.M. Chur Uria.

4. By making enquiries of Mahabat Ali Miji, Idris, Hosan Ali, Abdul Rahaman, Wali Amiruddi, Abdul, Kala Miah, Mobaruk Ali, Abdul Aziz, Nobin Chand Sardar, Ramjoy Sardar, Abbas Ali, Tazuddi, Aminuddi Sipahi, Umed Ali, Arsad Mia, Second Arsad, Aslam, Arif Mia, Amjad and others, the residents on both sides of the road from the house of the deceased to Kallabhanga, I learnt from Arip Mia that, after evening on the date of occurrenc , he met the deceased near and on the south of the house of Duna Mia on the south of the Kallabhanga *dighi*, that it was very dark then and that it was raining, that there was no one else with the deceased and that he (Arip) did not see any other person passing by that road. I visited the spot where he had seen the deceased. It is a little more than a quarter of a mile (by guess) from the house of the deceased. Nothing fit to give a clue for investigation was ascertained from any of the other persons.

From 4 to 8 P.M. Salla.

5. I made enquiries as to whether the deceased had any such enemy in any village other than his own, who is likely to have murdered him, but could not ascertain that there was such enmity with any one of a different village.

Ditto.

6. As it is late in the night now, I submit the account of to-day's proceedings after employing the accompanying constables in the work of investigation and instructing them to ascertain by moving about openly, as well as in secret, if any one talks about the occurrence.

9 P.M. Salla.

OSMAN ALI,
Sub-Inspector.

Despatched by a man from Chur Uria at 8 a.m. on 4th September, 1900.

EXHIBIT A23.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

District Superintendent of Police.
Received
The 4th September 1900.
NOAKHALI.

W. Y. R.

No. 10.

Idris Mea ... ... *Complainant.*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

No. and date of First Information Report.—No. 13, the 26th August, 1900, filed between 7½ p.m. and 8½ p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, etc.—Section 169, Criminal Procedure Code.—

Occurrence.—Between 10 a.m. of 25th August, 1900, and 6 a.m. of 26th August, 1900.

1. An account of yesterday's proceedings has been entered in Diary No. 9. After employing the accompanying Constables, Chowkidars, Dufadars, etc., in making enquiries in secret and in disguise during the night, I started for the town in the course of the investigation. The constables, Chowkidars and Dufadars, etc., who were employed come and state that they have (?) obtained any information about this occurrence. And I, too, have not achieved anything by making investigations in various places.

Date and hour—4th September 1900, 7 A.M., Chur Uria.

2. I have not been able to obtain any clue or information for the unravelling of the case by making various enquiries and conversing with various people myself as well as along with my sub-ordinates in the villages of Chur Uria, Salla Gataya, and Chur Salla. I come to town with the intention of going again to the place of occurrence after having acquainted the district superintendent, Shaheb Bahadur with the facts of the investigation.

From 8 to 10 A.M.
Town.

3. Nothing is found out by conversation with Guna Mia, Fazu Mia and Mabarak Ali Munshi of the village of Salla Gataya, and with Abdul Aziz and Kala Mia, etc., of Chur Salla near the village of occurrence, who have a miscellaneous and fancy goods shop in the town, as to whether they know anything about the occurrence or not.

From 12 A.M. to 3 P.M.
Town.

4. I went to the District Superintendent Shaheb Bahadur and told him about the circumstances of the occurrence, and what had up to this time been found out by investigation. And although there is very little hope of the case being unravelled, still I started for the village of occurrence, as I deemed it necessary to make some further investigation.

3 P.M.
Cutchery.

5. I held conversation with Asimuddi, Hossain Ali, Abdulla Mia, Hamidulla, Abdul Karim, Ismail and others of Chur Salla about the occurrence, but to no effect.

5 P.M.
Chur Salla.

6. I could not ascertain anything of use by varied conversation with Kazimuddi, Ahamad Ali, Abdul Hamid Ali, and others of the Village of Salla Gataya about the occurrence.

6 P.M.
Sulla Gataya.

7. From the Constables, etc., deputed to the village of occurrence, I learnt that they have not been able to obtain any clue or information for the unravelling of this case. As it is late in the night I submit an account of to-day's proceedings, remaining engaged in secret investigation.

7 P.M. to 8 P.M.
Chur Uria.

OSMAN ALI,
Sub-Inspector.

Despatched by a man from Chur Uria at 8 a.m. on 5th September, 1900.

EXHIBIT A24.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

LETTER DATED 29TH AUGUST 1900, TO THE INSPECTOR OF THE DIVISION.

W. Y. R.,
District Superintendent of Police.

To

THE INSPECTOR OF THIS DIVISION.

You will yourself supervise the Case No. 19 of the current month of Sudharam Thana. Dated the 27th August, 1900.

No. 42.

Received.
(Signature illegible).

The 29th August, 1900.

LORD OF JUSTICE,

I beg to state that I am engaged in acting as ordered. The 29th August, 1900.
(Signature illegible.)

(On back.)

District Superintendent of Police.
Received
The 31st August 1900.
NOAKHALI.

File with record of the case.

W. Y. R.,
District Superintendent.

The 31st August, 1900.

EXHIBIT A25.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

District Superintendent of Police.
Received
The 6th September 1900.
NOAKHALI.

W. Y. R.

No. 11.

Idris Mea ... ... *Complainant,*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

No. and date of First Information Report.—No. 13, the 26th August 1900, 7½ p.m. to 8½ p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, etc.—Section 169, Criminal Procedure Code.—

Occurrence.—Between 10 a.m. of 25th August, 1900, and 6 a.m. of 26th August, 1900.

1. By investigation up to this time no information of the culprits has been obtained. The constables that were employed last night to watch unperceived, by remaining behind the houses, whether the suspected persons or any other persons of the village have any talk about the occurrence, or any people hold any secret consultation in any place, state that no useful information has been obtained.

Date and hour—5th September 1900, 8 A.M.
Chur Uria.

2. I talked with some local men about the occurrence, but to no effect.

From 9 to 10 A.M., Chur Uria.

3. From conversation with Hasan Ali, Ahamed Ali Sayiud (?), Yakub Ali, Abdul Karim, Samid Ali, Anu Mia, Nizamuddi, Wazuddi, Azgar Ali, Arsad Ali, Akpal Ali, Munsur Ali, Abdul Rahim, Abdul Rahaman, Anwar Ali, Arsad, Rosan Ali, 2nd Abdul Rahaman, Abdul Majid, Miajan, Yakub Ali Chowdhry Punchayet, Mahomed Aslam Mia, Ahamed Ali (illegible), Fazil Tabaruk Ali, Chitan and others of the village of Chur Uria, about the occurrence, I could not obtain any clue or information as to where, by whom, and in what manner the deceased was murdered.

From 12 A.M. to 6 P.M. Chur Uria.

It is expressly stated here that the *benami* petition in the names of Tuka and others (of) Chur Uria, has been investigated into, along with this investigation. The details will be submitted by a separate report.

4. Night having come, I am unable to proceed further with the work and close the diary for the day, remaining engaged in the rest of the investigation.

7 P.M. Chur Uria.

OSMAN ALI,
Sub-Inspector.

Despatched by a man from Chur Uria at 8 a.m. on the 6th September 1900.

EXHIBIT A26.

A. P. PENNELL,
Sessions Judge.

The 16th January 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

District Superintendent of Police.
Received
7th September 1900.
NOAKHALI.

No. 12.

Idris Mea ... ... *Complainant,*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, the 26th August, 1900. Filed between 7½ p.m. to 8½ p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, etc. Section 169, Criminal Procedure Code.—

Occurrence.—Between 10 a.m. of 25th August, 1900, and 6 a.m. of 26th August 1900.

Date and hour—6th September 1900, 7 A.M., Chur Uria.

1. The constables, etc., employed last night in connection with this occurrence (case?), come and state that they have not been able to ascertain anything useful. I depute them again for to make investigation.

From 8 A.M. to 10 A.M., Salla.

2. By moving about in the villages of Chur Uria and Salla I conversed with many people, and having met with cow-herds in the field I talked with them also about the occurrence; but could not learn anything fit to give a clue.

From 1 to 7 P.M., Salla.

3. I conversed with Janu Munshi Punchayet, Roshan Ali, Mrij Ali, Ramdoya Nath, Abdul Jan Mia, Farid Mia, Keramat Ali, Chand Mia, Badsha Mia, Hasan Ali, Chandramoni (illegible), Sona Mia, Abdul Rahman, Fazil (illegible), Mahomed Arip, Abdul Majir, Moniruddi Chaprasi and others of Salla about the occurrence. I found that it was not at all known as to who, when, where and in what manner murdered the deceased. Every body thinks that as the deceased had enmity with many people, some of his enemies probably murdered him and threw his corpse into the tank.

8 P.M., Salla.

4. By investigation up to this time no clue whatever has been obtained as to the cause of the death of the deceased, or as to by whom and where he was murdered. The death of the deceased has pleased many people. And from the way in which the villagers are found to be combined, there is very little hope of anything being suddenly (soon?) discovered. However, I submit an account of to-day's proceedings to your honour, remaining engaged in making attempts to the best of my power.

OSMAN ALI,
Sub-Inspector.

Despatched by a man from Chur Uria at 8 a.m., on 7th September, 1900.

EXHIBIT A27.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

District Superintendent of Police.
Received
8th September 1900.
NOAKHALI.

No. 13.

Idrish Mondul (?) ... ... *Complainant,*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, the 26th August 1900. Filed between 7½ p.m. and 8½ p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, etc.—Section 169, Criminal Procedure Code.

Occurrence.—Between 10 a.m. of 25th August, 1900, and 6 a.m. of 26th August, 1900.

Date and hour—7th September 1900, 7 A.M., Chur Uria.

1. The accompanying constables state that they have not been able to obtain any clue or information for the unravelling of the case by their secret investigations last night. I employ Constables Abdul Hamid (and) Nur Mia in making further investigations.

From 8 A.M. to 2 P.M., Chur Salla.

2. I went about making enquiries in Chur Uria and the adjoining village of Chur Salla, and conversed with Yasin, Islam Manjhi, Raja Mea and others. I could not ascertain anything useful.

2 p.m. Chur Salla.

3. I start for the head-quarters to acquaint the District Superintendent Saheb Bahadur and the Divisional Inspector Babu with the circumstances of the investigation into this case up to this time. The aforesaid two Constables remain at the place of occurrence.

3 P.M., Police Office.

4. Arriving at the Sudder I made the District Superintendent Shaheb Bahadur and the Inspector Babu acquainted with the circumstances of the investigation up to this time. On receipt of instructions from them I made ready to go to the place of occurrence.

From 4 to 6 P.M., Town.

5. I had talk with several pleaders, *mukhtars* and litigants of the *cutchery* (Court) about this case, but to no effect.

6 P.M., Station.

6. I received *purwana* No. 6006 of this day from the Police Office for telling the complainant to attend with his witnesses before the District Superintendent Shaheb Bahadur at the Sudharam Thana on the 9th of this month.

9 P.M., Chur Uria.

7. On arriving at the place of occurrence, I learnt from the constables employed that they had not up to this time obtained any information. As it is late in the night, I close the diary for this day.

OSMAN ALI
Sub-Inspector.

Despatched by a man from Chur Uria at 8 a.m. on the 8th September, 1900.

EXHIBIT A28.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

District Superintendent of Police.
Received
9th September 1900.
NOAKHALI.

W. Y. R.

No. 14.

Idris Mea ... ... *Complainant,*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, the 26th August, 1900. Filed between 7½ p.m. and 8½ p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, etc.—Section 169 Criminal Procedure Code.—

Occurrence.—Between 10 a.m. of 25 August, 1900, and 6 a.m. of 26th August, 1900.

Date and hour—8th September 1900, 7 A.M., Chur Uria.

1. On my arrival at the place of occurrence last night, the constables employed stated that they had not been able to obtain any clue or information for the unravelling of this case. Thereupon I employed them to make further investigations. They come to-day and state that they moved about and made enquiries secretly in the village at night, but to no effect.

8 A.M.
Chur Uria.

2. I sent constable Nur Mia to fetch the complainant before me for the purpose of making over to him (the complainant) the *perwana* No. 6006 received from the District Superintendent Shaheb Bahadur.

9 A.M.
Chur Uria.

3. Constable Nur Mia comes back and says that he did not find the complainant at home, that the complainant was gone to town on business. I told the said constable to bring up the complainant when he should come home.

From 10 A.M., to 12 A.M., Chur Uria.

4. I moved about in the village of Chur Uria and conversed with Naimuddi Miaji, Hamid Mia, Karim Bux and others, but could not ascertain anything useful.

2 P.M.
Complainant's house.
1. Naimuddi Miji.
2. Afsuruddi Bhuian.
3. Arsad Mia.
4. Miajan Bepari.
5. Keramat Ali.
6. Yakub Ali, inhabitants of Chur Uria.
7. Wazuddi Khalifa, inhabitant of Chur Sulla.

5. Upon going to the complainant's house and finding him, I informed him of the purport of the *perwana* of the District Superintendent Shaheb Bahadur mentioned in the second paragraph, in the presence of the persons mentioned in margin. After reading the said *perwana* he (the complainant) signed his name on its back, and having read the order he wrote that he was informed of it. I return the said *perwana* to your Honour.

3 P.M. to 6 P.M.
Complainant's house.

6. I had a talk with the deceased's wife Rokia Banu (his) *baibahiks* Wazuddi Khalifa (and) Mriza Ali Jaigirdar, and (his) neighbours Afsaruddi Bhuian, Keramat Ali, Yakub Ali, Roshan Ali, Arsad, Miajan Bepari, Ahamad Mia, Lal Mia, Abdul Bari, Umed Ali and others, and asked them if they had obtained any clue or information about this case up to this time. Nothing useful did come out. Only from Wazuddi Khalifa I learnt that he had heard that on the date of occurrence the mother of the suspected accused Osman Ali Chowkidar and Fazar Ali heard the cries of a man on the west in front of their house, but he (Wazuddi Khalifa) could not say for certain from

whom he had heard this. However, to ascertain how far this statement was true I started for the house of the said *chowkidar*.

7. On arriving at the house of Osman Ali Chowkidar and Fazar Ali I asked their mother Arzan. She said that she had not heard the cries of any man on the date of occurrence, that she had not said so to any body, and that she did not know anything about the cause of the death of the deceased.

6 P.M. Chur Uria.

8. Night having come I am unable to do anything more and close the diary, remaining engaged and employing the accompanying Constables Nur Mea and Abdul Hamid in making secret investigation and further enquiry.

7 P.M. Chur Uria.

OSMAN ALI,
Sub-Inspector.

Despatched from town at 10 a.m.,
on the 9th September, 1900.

EXHIBIT. A29.

A. P. PENNELL,
Sessions Judge

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

District Superintendent of Police.
Received
The 10th September 1900.
Noakhali.

W. Y. R.

No. 15.

Idris Mea ... ... *Complainant*,

versus

Suspected Sadak Ali and others ... ... *Defendants*.

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, the 26th August 1900, 7½ p.m. to 8½ p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.—

Occurrence.—Between 10 a.m. of 25th August, 1900, and 6 a.m. of 26th August, 1900.

1. After the recording of the account of the investigation in this case in Diary No. 14, enquiries were made secretly as well as openly at night, but to no effect. Having employed the constables deputed in making enquiry again, I, too, go out to make enquiries.

Date and hour. The 9th September 1900, 7 A.M. Chur Uria.

2. After having conversed with certain people of the village of Chur Uria and Salla in the course of the investigation I reached headquarters. After having acquainted the Divisional Inspector with the circumstances of the investigation I start again for the place of occurrence.

8 A.M. to 10 A.M. Town.

3. I reach the place of occurrence. On the way I met Abdul Karim, Amanuddi Sepahi, Kalimuddi, Karimbux and others, and had talk with them about the occurrence, but to no effect.

11 to 12 A.M. Chur Uria.

4. By moving about in Chur Uria, Ichakhali, Poran Jagannath and other places I talked with, and made enquiries of, many people, but to no effect. The constables employed, too, having stated that they had not obtained any information by enquiry up to this time, they are employed to make further enquiry.

2 to 7 P.M. Ditto.

5. I close the diary for to-day, engaging myself as well as the accompanying Constables in making secret inquiries.

8 P.M.
Chur Uria.

OSMAN ALI,
Sub-Inspector.

Despatched by man from Chur Uria, at 7 a.m., on the 10th September, 1900.

EXHIBIT A30.

A. PENNELL,
Sessions Judge.

The 16th January, 1901: ... ...

SUMMONS TO THE COMPLAINANT'S WITNESSES, ABDUL KARIM AND ISMAIL.

No. 1759.

Received at 2.30 p.m., the 11th September, 1900. Made over to Mohesh Singh, Constable.

Summons to Abdul Karim and Ismail, of Chur Uria, Station Sudharam.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali ... ... *Accused.*

Case under Section 302, Indian Penal Code.

Whereas you have been cited as witnesses in the above case on behalf of the complainant, it is necessary that you should appear to give evidence. You are, therefore, ordered to appear before me, in this office, at 8 a.m., on the 12th September of the current year. Take care not to fail to appear. The 11th September, 1900.

W. Y. REILY,
District Superintendent of Police.

Noakhali.

No. 6072.

(On back.)

Submitted that the summons having been made over to me for service, I visited the Mofussil and found witness Ismail. I served a copy of the summons personally on him in the presence of witnesses Nos. 1 and 2, whose names are mentioned in the margin, and I have got his signature by way of acknowledgment of the receipt of the summons. I also found the other witness, Abdul Karim, and I served the copy of the summons in his name personally on him in the presence of witnesses Nos. 3 and 4 named in the margin. The summons is got signed by him. This is what I submit by this *kaifiat*. Dated 11th September, 1900.

1. Abdul Ajij, Constable of Chur Uria.
2. Moti Mia, son of Amirruddi, of Salla.
3. Grish Chandra Dey, of Chur Uria.
4. Anwar Ali Chowkidar, of Salla.

MOHESH CHANDRA.
ISMAIL.
ABDUL KARIM.

Submitted.

That the particulars about the service of the summons are detailed in the Constable's *kaifiat*. Dated 11th September, 1900.

LUKHI KANTA CHAKRAVARTI,
Writer-Constable,
Sudharam Station.

... ...

The return is without signature. It is, therefore, sent back for signature.

The 12th September, 1900. ... ...

Ordered that it be put up with the record.

Illegible.
for District Superintendent.

The 24th September, 1900.

EXHIBIT A31.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, STATION SUDHARAM, SANDIP.

No. 16.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Case under Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, the 26th August, 1900, 7.30 p.m. to 8.30 p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, etc.—Section 169, Criminal Procedure Code.—

Occurrence.—Between 25th August, 1900, 10 a.m. and 26th August, 1900, 6 a.m.

1. After I had submitted the particulars of yesterday's enquiry by Diary No. 15, I, accompanied by constables, made various enquiries, both publicly and privately, in the village of occurrence last night, but without any success. I keep myself engaged in the investigation, and depute the constables to make enquiries in the case.

Date and hour. 10th September 1900, 7 A.M., Chur Uria.

2. I talked with the complainant's mother, Rokia Banu, afid her neighbours, Naimuddin Miaji, Nur Mia, Moulvi Mahomad, Mussa Mia, Keramut Ali, Abbas Ali, Kala Mia, Abdul Bari, Korim Buksh, and others, but to no effect.

8 A.M. to 7 P.M., Chur Uria.

3. The Constables deputed appeared before me, and said that they made various enquiries throughout the villages of Chur Uria, Chur Salla and Ichakhali, but to no effect.

8 P.M., Chur Uria.

4. I engage the Constables I have got with me to make secret enquiry.

9 P.M., Chur Uria.

I, myself, continue in the investigation work, and I close the diary for the day.

Despatched from Chur Uria, through a messenger, 11th September 1900, 10 A.M.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A32.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM, SANDIP.

No. 17.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, dated 26th August, 1900, 7½ p.m. to 8½ p.m.

Names of persons arrested and sent up—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code—

The occurrence took place between 25th August, 1900, 10 a.m., and 26th August, 1900, 6 a.m.

1. I, with the accompanying constables, made various enquiries last night, but got no clue for tracing the offenders. The results of inquiries made this day are submitted one by one.

Date and hour. The 11th September 1900. 7 A.M., Chur Uria.

2. I walked over the whole of the villages of Chur Uria and Salla, and conversed with Dulah Mia, Abdul Bari, Badshar Mia, minor, Oliullah, Abdul Mojid, minor, Sadak Ali, Sidhik Ali, Anser Ali, Bodiat-Jumma, minor, Ismail, Allah Mia, minor, Abdul Kadir, minor, Momtaz, minor, Alefa, minor, Abdul Rasid, minor, Anwarulla, minor, Amirunissa, minor, Kalimuddin Bepari, Abdul Rohaman, Bodiat-Jumma, Arip, Atar Banu, Atarjan, Abida Sakina Banu, Umda Banu, Tofel Ahmad Khatun Banu, Lotifa Banu, Safar Banu, Shokar, Banu Jobedah Khatun, Khotija, Hamida, minor, Amina, minor, Gole Banu, minor, Rup Banu, Atar Banu, Abdul Aziz, minor, Purno Chunder Seal, minor, Kali Kumar Seal, Mobarak Ali, Ahamad Ali, Abdul Rohaman, Raoshan Ali, Ismail, Akpan Ali, Chand Mia, Mochan Ali, and other men of the village, but I could not get any information as to where, and at what time, and in what way, and by whom the deceased was murdered; nor could I hear of any vice in the character of the deceased.

8 A.M. to 6 P.M., Chur Uria.

3. The inquiry about the occurrence has been going on for 17 days, but up to this time no such information has been gathered as may lead me to any hope for success. Notwithstanding the inquiry made for such a length of time the offender is not likely to be traced. So it is necessary once to try whether the inquiry made for some time from a village other than the village of occurrence, will lead to the tracing of the offender. I, therefore, ask for an order for leaving the place of occurrence for some days, and return to the Station, where I may make inquiries in connection with this occurrence, along with other works.

7 P.M., Chur Uria.

4. In spite of my making inquiries in various ways from place to place, I have not as yet been able to achieve any success. The constables, accompanying me are engaged in the inquiry with me. I submit the particulars herein.

8 to 10 P.M., Chur Uria.

OSMAN ALI,
Sub-Inspector.

Despatched by a bearer from Chur Uria at 7 a.m., on the 12th of September, 1900.

EXHIBIT A33.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM, SANDIP.

No. 18.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, dated 26th August, 1900, 7½ p.m. to 8½ p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.—

Occurrence.—Between 25th August, 1900, 10 a.m., and 26th August, 1900, 6 a.m.

1. Various enquiries have been made in connection with the occurrence both privately and openly, but the result is not successful, and it does not appear that there is any near chance of the enquiry being successful. Be that as it may, I continue to proceed with the enquiry to the best of my ability.

Date and hour—12th September 1900, 7 A.M., Chur Uria.

2. The constables deputed for making enquiries came to me and reported that they failed to find any clue in connection with the occurrence. I have engaged them in making further enquiry.

12th September 1900, 7 A.M., Chur Uria.

3. I walked here and there in the village of occurrence and in the adjoining village Salla, and had talk with many men on the subject of the occurrence, bnt I failed to gather any information that may lead to any trace of the offender.

9 A.M. to 12 A.M. Chur Uria.

4. I moved from place to place in the villages of Ichakhali, Poyan, Jagannath, Salla, Bharatkhal, and Chur Uria, and made enquiries. The constables deputed also told me that they too made enquiries. However, no information of any effect has been obtained.

2 P.M. to 7 P.M. Chur Uria.

5. The constables are deputed to make secret enquiry. I continue to go on with the investigation, and submit herein the particulars of the enquiries made this day.

8 P.M.
Chur Uria.

OSMAN ALI,
Sub-Inspector.

Despatched by a bearer from Chur Uria at 7 A.M. 13th September 1900.

EXHIBIT A34.

A. PENNELL,
Session Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM, SANDIP.

No. 19.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of 1st Information Report.—No. 13, 26th August, 1900, 7.30 p.m. to 8.30 p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.

Occurrence.—Between 25th August, 1900, 10 a.m., to 26th August, 1900, 6 a.m.

1. The Constables deputed came to me and said that last night they walked through the village of occurrence in secret, but the result was not successful. The constables are deputed to make fresh enquiries.

Date and hour—13th September 1900. 7 A.M., Chur Uria.

2. I passed through and walked over the villages of Chur Uria, Chur Salla, Poyan, Jugannath, Salla, Bharutkhal, and had conversation with a large number of men and gathered various informations from them. But I could not obtain any useful information.

8 A.M. to 7 P.M., Chur Uria.

3. The constables deputed to make enquiry returned and said that their enquiries up to date did not prove successful as to the gathering of useful informations. They are again deputed to make secret enquiry.

8 P.M., Chur Uria.

4. Engaging myself in the work of making enquiry actively, I close the Dairy for the day.

9 P.M., Chur Uria.

OSMAN ALI,
Sub-Inspector.

Despatched by bearer from Chur Uria at 11 A.M., 14th September 1900.

EXHIBIT A35.

A. PENNELL,
Session Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM, SANDIP.

No. 20.

Idris Mia ... ... *Complainant,*

versus

Sakak Ali and others ... ... *Accused.*

Section 302, Indian Penal Code.

Number and date of 1st Information Report.—No. 13, dated 26th August, 1900, 7.30 p.m. to 8.30 p.m.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.

Occurrence.—Between 25th August, 1900, 10 a.m., and 26th August, 1900, 6 a.m.

1. The District Superintentent of Police is expected to come to the place of occurrence this day, accompanied by the Inspector Babu. This news I got from the letter of the Writer Constable at the Thana, brought by Abdul Hakim Chowkidar. I remained waiting for them. Abdul Hamid and Nur Mia, constables deputed for gathering information, say that they are told that Atar Ali, Torab Ali, and Hassan Ali of Salla, know something of the occurrence. I send Nur Mia, constable, to bring them here.

Date and hour—14th September 1900, 6.30 A.M. Chur Uria.

2. From Hassan Ali Chowkidar I learn that he heard from the complainant himself that he having caused Torab Ali, Islam, Hassan Ali, Atar Ali, and Rajjab Ali to give evidence before the District Superintendent of Police, for proof of his father's murder, and that the District Superintendent of Police accordingly took the statements of the accused persons, and that the accused persons have denied having committed the offence.

7 A.M., Chur Uria.

3. Nur Mia Constable came before me and said that he could not find the said three persons, and that he was told by the inmates of their respective houses that Torab Ali had gone to Chur Durbesh, Hossan Ali and Atar Ali to Paglar Chur.

9 A.M., Chur Uria.

4. I got an order through Ahmed Ali Constable for keeping witnesses Hossan Ali, Torab Ali, Islam, Rajjab Ali, Atar Ali, and Abdul Aziz in atendance. I depute constables Nur Mia and Abdul Hamid to produce them.

10 A.M., Chur Uria.

11 A.M., Chur Uria. 5. The Divisional Inspector arrives at the village of occurrence.

6. Head Constable Mohim Chundra Mojumdar reaches the village of occurrence under the order of the District Superintendent of Police.

12.30, Chur Uria.

12.30, Chur Uria. 7. Constable Nur Mia produces Rojjab Ali and Abdul Aziz.

8. Constable Abdul Hamid produces Atar Ali, and says that the other witnesses named in the 4th paragraph of the Diary have not been found.

12.45, Chur Uria.

1 P.M., Chur Uria. 9. The District Superintendent of Police reaches the village of occurrence.

10. District Superintendent of Police inspected the house of the deceased, and several other places, and prepared a map thereof, and he questioned the witness Rojjab Ali and the wife of witness Torap Ali. I and the Inspector Babu and Mohim Mojumdar accompanied him from place to place and helped him in his work. The accused Abdul Hakim, Sadak Ali and Emdadulla and complainant and his men Wajuddi Khalifa and others moved about here and there with the District Superintendent of Police. By the said accused persons I am told that in their defence they stated before the District Superintendent Police yesterday that the wife of the deceased had intrigue with Bakshi Patwari's son Sadak Ali, and that it was not unlikely that the occurrence was caused by him on account of the said intrigue. Jaman Ali Chowkider, who was present, was asked about it. He said that he did not know anything of the intrigue, but that he only heard of it.

1 to 5 P.M., Chur Uria.

5½ P.M., Chur Uria. 11. The District Superintendent of Police starts back for the town.

7 P.M., Chur Uria. 12. The Inspector Babu and the Head Constable Mohim Chandra Mojumdar go towards the town.

7 P.M., Chur Uria. 13. I depute Nur Mia, Abdul Hamid, and Mohammad Ali Constables to produce the rest of the accused and the neighbours.

14. Abdul Halim and Aslam, accused, and Hamid Ali Mia, Ahamad Mia, Korim Buksh, Abdul Rohim, Yakub Ali, Abdul Bari, Lal Mia, Monohar Ali, and Elahi Buksh, neighbours, being produced by the said constables, I learn from them that the widow of the deceased has intrigue with Bakshi Patwari's son Sadak Ali for a long time.

9 P.M., Chur Uria.

15. I close the diary of the day. The District Superintendent of Police and the Inspector Babu have left the place of occurrence, saying that they would again come to the village to-morrow. After they come I shall act as they would direct. I depute the constables accompanying me to hold secret enquiry in connection with the occurrence.

9 P.M.. Chur Uria.

Despatched by a bearer from Chur Uria at 2 p.m. 15th September, 1900.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A36.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

EXHIBIT A37.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE. POLICE STATION, SUDHARAM.

W. Y. R.

Idris Mea ... ... *Complainant.*

versus

Suspected Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, dated 26th August, 1900, from 7 p.m. to 8½ p.m., Institution.

Occurrence.—Between 25th August, 1900, 10 a.m., and 26th August, 1900, 6 a.m.

1. The District Superintendent and the Divisional Inspector Babu are to come to-day to the place of occurrence *viâ* Bellew Saheb's Hat. I proceed in that direction to receive them.

Date and hour—15th September 1900, 7 A.M., Chur Uria.

2. I have made enquiries of many persons on the way regarding this case, but in vain. Met the Sahib and the Inspector Babu now. Head Constable Mohim Chundra Mozumdar is in their company. They are coming plotting from that direction towards the village of occurrence. I also join them. The complainant also under order of the Sahib has appeared with his witness, Hossain Ali.

1½ P.M., Chur Uria, Bairagi *hat* road.

3. I walked with the Sahib at various places in the village of occurrence. Plotting was made till 4 o'clock. At that time witness Torab Ali also appeared and showed the place of occurrence. After that the Sahib started for the town, leaving instructions to make inquiries as to the aforesaid love intrigue. The work at the station is in arrear; and I asked instructions as to whether I should leave the place of occurrence, pointing out that in case I left the place of occurrence, something new regarding the case might come to light and be circulated; and the Sahib directed me to leave the place of occurrence for some time.

1½ P.M. to 4½ P.M., Chur Uria.

4. The Inspector Babu started for the town accompanied by Mohim Mozumdar, Head Constable. I took charge of duty to-day; and after deputing the constables in my company to institute inquiries I closed the diary.

6 P.M., Chur Uria.

Despatched from Town 16th September 1900, 2 P.M.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A38.

A. PENNELL,
Sessions Judge.

The 16th January 1901.

16th September 1900, 7 P.M. Station.

1. Nur Mia and Abdul Hamid, constables, produced the following witnesses, and I made inquiries of them.

7 to 8 P.M., Station.

2.—1. Maslim, son of Asaruddi, of Chur Uria.
2. Jita Mia, son of Tara Mia, of the above place.
3. Samad Ali, son of Men Gazi Bepari, of the above place.
4. Keramat Ali, son of Kazimuddi, of the above place.

These persons say that Rokia Banu, widow of the deceased has love-intrigue with Sadak Ali son of Bukhsi Patwari. Twenty-five to thirty years ago, there was an enticement-case between the deceased and Sadak Ali consequent upon the said intrigue. Sadak Ali was discharged in that case. The persons Nos. 2 and 3 were witnesses on behalf of the deceased. The age of the person No. 1 is about 50 years. The age of the persons Nos. 2 and 3 is about 65 years, and that of No. 4 is about 40 years. They cannot say who have killed the deceased. Some suspect the persons accused, while others suspect the said Sadak Ali. The deceased had a number of enemies. That woman had love-intrigue also with Asaruddi Chowkidar, the deceased father of Osman Ali Chowkidar, accused.

8 P.M., Station.

3. Deputed the said two Constables again to make inquiries in secret, and closed the diary of this date.

Despatched from Station 17th September 1900, 10 A.M.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A39.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

17th September 1900, 5 P.M., Station.

It should be ascertained by inquiry if Sadat Ali is still in the habit of visiting deceased's wife before deceased's death, and if the intrigue was known to the son, and if he still knows of it going on.

W. Y. R.

The 18th September 1901.

1. Nur Mia, constable, having produced the undermentioned persons, it appears from inquiries made of them that the deceased's wife Rokia Banu, is unchaste, she has had a love-intrigue with Sadak Ali, son of Bukshi Patwari, for a long time. She had love-intrigue also with Asaruddy Chowkidar, the deceased father of the accused Osman Ali Chowkidar. There was a case brought by the deceased against Sadak Ali, 24 or 25 years ago, for enticing away his wife. That case was dismissed. They cannot say by whom the deceased was killed, but from Sadak Ali's conduct they entertain suspicion against him, the reason being that Sadak Ali now intends to marry the deceased's widow in *nika* form, and in order to win over the complainant has made a proposal to give him his daughter in marriage. Although the deceased had a few petty cases against some of the accused, yet these witnesses do not believe that this circumstance led them to commit so grave an offence.

1. Wali, son of Asaf, of Chur Uria, aged 55 years.
2. Rosun Ali, son of Durlabh of the above place, aged 60 years.
3. Umed Ali, son of Badaruddy, of the above place, aged 60 years.
4. Abdul Selam, son of Kaem Mia, of the above place, aged 40 years.
5. Kalimuddy Bepary, son of Kemuddy, of the above place, aged 70 years.

6 P.M., Station.

2. Deputed the said Nur Mia, Constable, and Constable Govind Pal again to make inquiries in secret, and closed the diary of this date.

Despatched from Station. 18th September 1900, 8 A.M.

OSMAN ALI,
Sub-Inspector.

EXHIBIT A41.

No. 5883.

A. PENNELL,
Sessions Judge.

The 16th Januarv. 1901.

W. Y. R.

SUB-INSPECTOR, STATION SUDHARAM.

No. 13, August.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Accused.*

Section 302.

Diary No. 2 of the above case has been filed ; and you are informed that you should try your best to find out the real offender in this case.

No. 1708.

Received 4th September, 1900.

Signature (illegible).

On the back.

Received the order.

The 7th September, 1900.

OSMAN ALI,
Sub-Inspector.

File with record of the case.

W. Y. R.,
D. S.

The 8th September, 1900.

EXHIBIT A42.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

No. 6098.

W. Y. R.,
District Superintendent of Police.

To

SUB-INSPECTOR, STATION SUDHARAM.

Case No. 13, August , Section 302.

Inform the undermentioned accused persons in the above case to appear before me to-morrow during office hours. Dated 12th September. 1900 :—

Sadak Ali.
Aslam.
Emdadulla.
Anwar Ali.
Abdul Halim.
Osman Ali.
Fazar Ali.
Abdul Hakim.
Abdul Karim.
Yakub Ali.
Aminuddi.

On the back.

No. 1767.

Received 12th September, 1900.

LUKHI KANI,
(illegible).

I beg to submit that the order has been carried out.

OSMAN ALI,
Sub-Inspector.

The 16th September, 1900.

Order.

Put up with the file.

The 17th September, 1901.

W. Y. R.,
District Superintendent of Police.

EXHIBIT A 43.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE,
POLICE STATION, SUDHARAM.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of 1st Information Report.—No. 13, 26th August, 1900, 8½ o'clock.

Instituted ditto.

Occurrence.—25th August, 1900.

Date and hour.—27th September 1900, 2 P.M.

1. Keramat Ali of Salla.
2. Amzad Gazi of Salla.
3. Samad Ali of Salla.
4. Arsad Ali of Chur Uria.
5. Abdul Aziz of Chur Uria.
6. Abdul Karim of Chur Uria.
7. Nunda Kumar Das of Chur Uria.
8. Nanda Kumar Chuckerbutty of Salla.
9. Sadat Ali of Chur Uria.
10. Asgar Ali of Chur Uria.
11. Hyder Ali of Chur Uria.
12. Abdul Latiff of Chur Uria.
13. Abdul Aziz of Chur Uria.
14. Wasil of Chur Uria.
15. Amir Khan of Salla.
16. Nur Mia of Chur Uria.
17. Amiruddin of Salla.
18. Abdul of Chur Uria.
19. Mahabbat Ali of Chur Uria.
20. Abdul Mazid of Chur Uria.
21. Arsad Meah of Chur Uria,
22. Ahamadulla of Chur Uria.
23. Amzad of Chur Uria.
24. Abbas Ali of Chur Uria.

1. Directed by the District Superintendent of Police to make inquiries of the persons named on the margin, at 12.30 a.m. this day I started from the town, accompanied by Govinda Pal, Ramdhun Bakya, Abdul Hamid, and Nur Mia, constables, and have now arrived at Peshkar's *hat* in village Salla, the place of occurrence.

8 P.M.

1. Asir of Salla.
2. Aslam of Salla.
3. Hasan Ali Chowkidar of Salla.
4. Ram Gopal Shaha of Salla.
5. Abdul Aziz of Chur Durbesht.
6. Karim Buksh of Salla.
7. Abdul Karim of Chur Uria.
8. Abdul Aziz of Salla.

2. This is the Peshkar's *hat* day. On the occasion of that *hat* I found present the marginally named persons, Nos. 1 to 17, aforesaid, who have come on receipt of notice from me, as also the persons, noted here on the margin, who have been cited by the complainant Idris Mia, and examined them consecutively with reference to the case, so far as I could up to this time. In spite of all endeaveurs on my part I could not cause the persons, Nos. 18 to 24, named on the margin of paragraph 1 to appear before me. I learn that some of them have on business gone to places within the jurisdiction of Station Hatia, and some to places within the jurisdiction of Station Lakhimpur; and where the rest have gone nobody can say. They will not probably return home soon. Complainant Idris says they have merely heard of the case, but are not eye-witnesses.

8 P.M. 3. Upon inquiries up to this time it appears to me:—

That the persons Nos. 1, 3, 6, 7, 8, 9, 11, 12, 14 and 16 of paragraph 1, and Nos. 2, 4 and 6 of paragraph 2 have heard from witnesses Hosain Ali, Torab Ali, Islam and Rajjab Ali that the offence was committed by the accused Sadak Ali, Aslam, Anwar Ali, Yakub Ali and Abdul Halim.

That the persons Nos. 2, 10, 13 and 15 of paragraph 1 and No. 7 of paragraph 2 have merely heard that Ismail Jagirdar has been killed; but they did not come to know, nor heard at first by whom and in what manner he was killed. They have now heard from rumour that the said Hosain Ali and other witnesses say that the said Sadak Ali and others have committed this murder.

EXHIBIT A44.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

That the witness No. 4 of paragraph 1 went to the house of the accused Aslam and Sadak Ali on the night of the occurrence accompanied by Hosain Ali Chowkidar, and found that they, the said accused, had made themselves scarce with their families; but the witness No. 3 of the 2nd paragraph, *i.e.*, the said Hosain Ali Chowkiddar, says that he found the said two accused at home that night; but he did not find them at home the next morning. At that time their families were at home. Witness No. 17 of paragraph 1 and witness No. 8 of paragraph 2 also, like the said Hosain Ali Chowkidar, say that they did not find the said two accused at home on the morning following the night of occurrence. Witness No. 1 of paragraph 2 also says that he heard from Hossain Ali Chowkidar of the absence of the two accused persons from home on the night of the occurrence.

That witness No. 5 of paragraph 2 who is a ferryman (says) that when it was past midnight, on the night of occurrence, the accused Sadak Ali and Aslam offered him Rs. 3 to get them ferried over to enable them to go to Hatia; but at that ghat a fare of 2 annas only per head is charged. As instead of that the two accused offered to pay up to Rs. 3 he suspected them of some bad motive for which he refused to ferry them over.

That the witness No. 5 of paragraph 1 heard on the very night of occurrence from the witness named Islam who gave evidence as an eye-witness before the District Superintendent of Police that the occurrence took place in the manner stated by Islam.

That the said witness Islam and the complainant Idris say that Islam and witnesses Torab Ali, Hassain Ali and Rajjab Ali gave evidence before the Sub-Inspector Osman Ali to the same effect as they did before the District Superintendent against the accused Sadak Ali, Aslam, Anwar Ali, Yakub Ali and Abdul Halim. I now start for the town contriving means to have in attendance the persons Nos. 18 to 24 of the 1st paragraph and giving special instructions to the local chowkidars (on that subject).

MOTHURA NATH SEN,
Inspector.

This diary was copied out yesterday; but as I was out at 1 o'clock yesterday to arrest the accused persons in this case, and returned at 11 o'clock, it is signed and despatched now, 29th September 1900, 7 a.m.

W. Y. R.

The 15th October.

EXHIBIT A45.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION, SUDHARAM.

Idris Mia ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

No. and date of 1st Information Report.—No. 13, dated 26th August 1900, 7½ p.m. to 8½ p.m.

Names of persons arrested and sent up.—Sadak Ali and Aslam.

Occurrence.—Between 25th August 1900, 10 a.m., and 26th August, 1900, 6 a.m.

1. In pursuance of the District Magistrate's order as conveyed by the Court Sub-Inspector Babu's letter No. 1,128, dated the 29th September, 1900, an A form is submitted in this case on cancellation of the C. form. Personal recognizance bonds of the undermentioned witnesses are put up with the A form. The Inspector Babu of the B Division has arrested the accused Sadak Ali and Aslam. Descriptions of their features have been taken down. It appears from the Court Sub-Inspector Babu's letter, that the accused Yakub Ali, Anwar Ali and Abdul Halim have surrendered themselves to the Court. The Court Sub-Inspector Babu is requested to send their descriptive rolls to the Station. Consultation has been held in this connection with the Inspector Babu of the B Division. No recognizance bond could be taken from the complainant's mother Rokia Banu, and Torab Ali's wife Sona Banu, amongst the witnesses, they being *purda* women; and the witnesses No. 3 to 6 have not been found. Therefore summonses should be issued by the Court upon the witnesses Nos. 3 to 6, and if necessary, upon the witnesses Nos. 1 and 2.

Date and hour.—2nd October 1900, 8 P.M. Station.

OSMAN ALI,
Sub-Inspector.

1. Rokia Banu, widow of Ismail Jagirdur, of Chur Uria. 2. Sona Banu, wife of Torab Ali, of Salla. 3. Hasan Ali, son of Mahammad Kamil, of Chur Uria. 4. Islam, son of Mahammad Diam, of Chur Uria. 5. Abdul Aziż, son of Amanuddy Miaji, of Chur Uria. 6. Abdul Aziz, ferry—ghat *maji* of Chur Durvesh.	No recognizance bonds have been taken from these witnesses.
7. Idris Mia, son of Ismail Jaigirdar, of Chur Uria. 8. Torab Ali, son of Bukshi, of Salla. 9. Rajjab Ali, son of Reshan Ali, of Chur Uria. 10. Atar Ali, son of Mahabuddy, of Chur Salla. 11. Abdul Aziz, constable, of Chur Uria. 12. Abdul, son of Ardus Mollah, of Salla. 13. Ahamadulla, of Chur Uria.	Recognizance bonds have been taken from these witnesses.

A *purwanna* may be issued requiring the personal recognizance bond of witness Mahabbat Ali, of Chur Uria, to be taken and submitted. This witness knows that the defendants Sadak Ali started with his family for his son-in-law's house at sunrise after the night of occurrence, the 6th October, 1900.

(Signature illegible.)

Despatched 3rd October, 1900, 8 a.m., Station.

Purwanah issued.

W. Y. R.

The 15th October, 1900.

EXHIBIT A46.

A. PENNELL,
Session Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE. POLICE STATION, SUDHARAM.

Idris Mia ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, dated 26th August, 1900.

Instituted between 7½ p.m. and 8½ p.m.

Occurrence.—Between 25th August, 1900, 10 a.m., and 26th August, 1900, 6 a.m.

Names of persons arrested and sent up.—Sadak Ali, Aslam, Anwar Ali, Yakub Ali and Abdul Halim.

1. At the time the A Form Report was submitted on the 2nd October last, the undermentioned witnesses could not be found, and recognizance bonds could not be taken from them and submitted. Subsequently a *purwana*, No. 6,552 under order of the 6th October was received on the 11th October from the Police Office, directing that recognizance bond should be taken also from the witness Mahabbat Ali of Chur Uria and transmitted. Yesterday Constable Mahammad Ali was deputed to secure personal recognizance bonds from the said Mahabbat Ali and the undermentioned witnesses for their attendance at Court on the day fixed. Mahammad Ali, Constable, has now returned and produced the personal recognizance bonds of the said Mahabbat Ali, and the witnesses Nos. 3 to 6, and he reports that the witnesses Nos. 1 and 2 could not be found; and that for this reason he could not get recognizance bonds from them. The said personal recognizance bonds are sent to Court with a separate Report in order that the same may be put up with the A Form. If the evidence of the witnesses Nos. 1 and 2 be necessary they may be summoned, as already suggested. The Court Sub-Inspector Babu is requested to include in the A Form the name of the said witness Mahabbat Ali.

Date and hour—the 14th October 1900, 8 A.M., Station.

OSMAN ALI,
Sub-Inspector.

1. Rokia Banu.
2. Sona Banu.
3. Hasan Ali.
4. Islam.
5. Abdul Aziz.
6. Abdul Aziz.

The ferry ghat Majhi.

W. Y. R.

The 15th October

Despatched—15th October, 1900, 8 a.m., Station.

EXHIBIT A47.

A. PENNELL,
Session Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE. POLICE STATION, SUDHARAM.

Idris Mia ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, dated 26th August, 1900.

Occurrence.—25th August, 1900, 8½ o'clock.

1. Received order this day at 12 a.m. from the District Superintendent of Police to arrest and send up to Court Sadak Ali, Aslam, Yakub Ali, Abdul Halim and Anwar Ali, accused in this case. Accordingly I started from town at 1 p.m., accompanied by Mahammad Ali Nur Mia and Govinda Pal, constables of Sudharam Station, and have now arrived at the house of Idris Mia, complainant, at the place of occurrence. Idris is not now at home; he has gone to Sudharam.

Date and hour.—The 28th September 1900, 3 P.M., Chur Uria.

2. The accused Sadak Ali and Aslam live in the same house. On reaching their house I have taken Aslam into custody. I have been told that Sadak Ali has gone to town.

The 28th September 1900, 4 P.M., Chur Uria.

3. Went to the house of accused Yakub Ali, but could not find him also. The members of his family say that for the purpose of making medical treatment he went away this morning to some place not known to them.

The 28th September 1900, 4 P.M., Chur Uria.

4. Deputed Mahomed Ali Constable to search accused Anwar Ali. I came to the house of accused Abdul Halim, but could not find him also. I am told he also has gone somewhere this morning.

The 28th September 1900, 4 P.M., Chur Uria.

5. Again came to the house of complainant Idris. Constable Mahomed Ali came to say that accused Anwar Ali was not at home, and that he also went away somewhere this morning.

The 28th September 1900, 4 P.M., Chur Uria.

6. Complainant Idris returns home. He says he saw accused Sahak Ali, Yakub Ali and Anwar Ali in town this day at 10 or 11 o'clock. Hence I sent Constable Govinda Pal with Mirza Ali of complainant Idris' party and the local Chowkidar Kala Mia to town in search of the said accused persons; and considering that the said three persons may have by this returned home, as Idris has returned from town, I went to Anwar Ali's house. His mother and wife said that Anwar Ali did not return home. Hence out of suspicion I with Idris searched the house of the said Anwar Ali in the presence of Naimuddy Miji and Islam of Chur Uria, but could not find him.

The 28th September 1900, 5 P.M., Chur Uria.

7. Reached the house of Sadak Ali, where his wife and the wife of his brother Aslam were present; and out of similar suspicion I with Idris searched the house of the said Sadak Ali and Aslam in the presence of the said Naimuddi Miji and Dewan Ali of Salla. We did not find Sadak Ali.

The 28th September 1900, 5 P.M., Chur Uria.

8. Similarly I went to the house of Yakub Ali with the said persons, when Yakub Ali's wife, and Karim Buksh living in that house, were present there; and I searched the room of the said Yakub Ali and those of Aminuddi, Abdul Hakim and the said Karim Buksh who live in the same house with him, but did not not find him (Yakub Ali).

The 28th September 1900, 5 P.M., Chur Uria.

9. Reaching the house of accused Abdul Halim, in company with the said Naimuddi Miji and Dewan Ali, when his (Abdul Halim's) wife and Wali living in that house, were present there, I searched the room of the said Abdul Halim and that of Meher Ali who lives in the same house with him; (but) could not find Abdul Halim. We again came to the house of complainant Idris.

The 28th September 1900, 5 P.M., Chur Uria.

10. Searched for the accused Sadak Ali, Yakub Ali, Abdul Halim and Anwar Ali, but found no trace of them as yet. Govinda Pal Constable now returns with accused Sadak Ali and says that he found the said accused person within the musjid, in front of Sadhuram Station, at 6 p.m.; and that he could not find any of the remaining accused persons. Taking the said Sadak Ali into custody I sent him up along with Aslam, already arrested, to Court, in the charge of Constables Mahomed Ali, Govinda Pal, and Nur Mia. I deputed the local Chowkidars to search the accused Anwar Ali, Yakub Ali, and Abdul Halim; and directing the said three Constables to undertake the search of the said three accused persons after making over charge of the accused persons, I also now return to town.

The 28th September 1900, 9 P.M., Chur Uria.

MATHURA NATH SEN.,
Inspector.

Despatched from Sudder the 29th September, 1900, 4 p.m.

W. Y. R.

The 15th October.

EXHIBIT A48.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE.

W. Y. R.

The 15th October, 1900.

Idris Mia ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, the 26th August, 1900, at 8½ a.m.

Date of occurrence.—The 25th August, 1900.

1. My diaries of the 27th and 28th September last, in this case, show that the witnesses Nos. 18 to 24 of paragraph 1 of the diary of the said date, 27th, had not been found. Subsequently, on the 2nd October last, I delivered at Sudhuram Station for service, the summonses on the said seven persons fixing this day (for appearance). Mahabbat Ali of Chur Uria, No. 19, has now entered appearance; and he has been examined by me.

Date and hour.—The 4th October 1900, 10 A.M., town.

2. Arsad Mia, witness No. 21, and Abbas Ali, witness No. 24, have similarly entered appearance; and inquiries have been made of them, one after another.

The 4th October 1900, 12 A.M, town.

3. Abdul, No. 18, and Amjad, No. 23, of Salla, (not of Chur Uria) have similarly entered appearance; and inquiries have been made of them also, one after another.

The 4th October 1900, 3 P.M., town.

4. The remaining witnesses, No. 23 (20?) Abdul Majid, and No. 22, Ahamadulla, have not entered appearance as yet. Complainant Idris says that the said two persons have heard of the occurrence afterwards, and are not aware of anything else.

The 4th October 1900, 6 P.M., town.

It appears from the evidence of the said five persons (witnesses) examined to-day, that at sun rise next following the night of occurrence the defendant Sadak Ali, with his wife, was on his way to the house of his son-in-law, Munshi Meah, when he was seen by witness Mahabbat Ali; and the said Sadak Ali told him that Islam Jagirdar had been killed at night, and that fearing that the Daroga would come, he was going with his wife to his said son-in-law's house. The remaining four witnesses heard from witnesses Hosan Ali, Torab Ali and others, a day or two after the occurrence, that this murder was committed by the accused Sadak Ali, Aslam, Yakub Ali, Abdul Halim and Anwar Ali. Further, a day or two before the occurrence, on a Friday, in course of an altercation between Sadak Ali and Islam Jagirdar about the damage done by Sadak Ali's cows to Islam Jagirdar's paddy, Sadak Ali threatened to kill Islam Jagirdar; and this fact is known to witness Amjad; and witness Abdul saw the said Jagirdar on his way home from town after dusk on the day of occurrence.

MATHURA NATH SEN,
Inspector.

Despatched from Sudder, 5th October, 1900, 3 p.m.

EXHIBIT A49.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, dated 26th August, 1900, 8½ a.m.

Occurrence.—25th August, 1900.

W. Y. R.

The 15th October,

1. Witness Ahamadulla, No. 22, mentioned in yesterday's diary, has entered appearance. From inquiries made of him, I have come to know that after dusk, on the day of occurrence, the said witness saw the deceased Islam Jagirdar on his way home from the town, at a distance of a mile and a half from his house.

Date and hour.
5th October 1900, 3 P.M.

MATHURA NATH SEN,
Inspector.

Despatched from Sudder, 6th October, 1900, 4 p.m.

EXHIBIT 50.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

COURT SUB-INSPECTOR'S CONCISE MEMO.

1. Name of Police Station	Sudharam Police Station.
2. Number and date of First Information ...	No. 13, dated 26th August, 1900.
3. Number and date of A Form	No. 45, dated 2nd October, 1900.
4. Offence	Murder of Ismail Jagirdar—Section 302, Indian Penal Code.
5. Number and date of Special Diaries ...	No. 25, dated 2nd October, 1900.
6. Date of receipt of Dairies, with explanation for delay.	Dated 3rd October, 1900.
7. Name of complainant	Idris Meah.
8. Name of accused, sent up, and whether identified.	(1) Sadak Ali, (2) Aslam arrested, (3) Anwar Ali, (4) Abdul Halim, and (5) Yakub Ali, surrendered.
9. Name of absconding accused	Nil.
10. Details of previous convictions	Nil.
11. Property stolen and recovered	Nil.
12. Name of Investigating Officer	Sub-Inspector Osman Ali Miah.

Below should be given in the following sequence :—

(A) History of case, (B) Points to be proved, (C) Evidence available to prove each point. B and C should be given in parallel Columns facing each other.

(A) In this case after prolonged investigation, C Form trial was submitted on the 27th September, 1900. The District Magistrate, having directed an A Form to be submitted in this case ; A Form was submitted against the accused persons shown in Column 8 for trial for the 15th instant. Thirteen witnesses named in A Form on behalf of prosecution.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

(B)	(C)
1. That the body of the deceased was found floating in his tank.	1. Complainant and his mother Rokiya Banu, to prove this point.
2. That the deceased was seen in the evening of the night of occurrence going towards his home.	2. Ahmedulla and Abdul Aziz and another, Abdul Aziz to prove this point.
3. That the accused, Sadak Ali, Aslam, Anwar Ali, Abdul Halim, and Yakub Ali, seized and carried away the deceased, Ismail Jagirdar, from his way home.	3. Witnesses, Hosen Ali and Torap Ali, to prove this fact.
4. That the deceased was seen being beaten by the accused at the presence of witnesses Hosen Ali and Torap Ali.	4. Witness Atar Ali to prove this point.
5. That the accused, Sadak Ali, Aslam, Abdul Halim, and Yakub Ali were seen sitting by the side of the roads in the evening of the night of occurrence.	5. Witness Rajob Ali to prove this fact.
6. That witness, Torap Ali, told his wife to have seen a dead body being carried in the night of occurrence by four persons.	6. Witness Sona Bani's (?) to prove this fact.
7. That the accused, Sadak, Aslam, Abdul Halim and Yakub Ali were seen carrying a body.	7. Witness Islam to prove this point.
8. That it was heard from witness Islam that a body had been seen carried by accused, Sadak, Aslam, and two others.	8. Witness Abdul to prove this point.
9. That the accused, Sadak and Aslam, requested the Ferryman to have them crossed the river Hatia Channel in the night of occurrence.	9. Witness Ferryman Abdul Aziz.
10. That in the early morning following the night of occurrence accused Sadak Ali going with his wife to his father-in-law's house.	10. Witness Mahabat Ali to prove this fact.

KRISHNA KISHORE KAR.

The 14th October, 1900.

EXHIBIT A51.

No. 6083.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

PURWANA FROM THE OFFICE OF THE DISTRICT SUPERINTENDENT OF POLICE AND CORRESPONDENCE BETWEEN THAT OFFICE AND THE SUB-INSPECTOR, OSMAN ALI.

W. Y. R.

No. 13, August, 1900.

Sub-Inspector, Sudharam.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Accused.*

Case under Section 302.

It appears on reference to the Special Dairy No. 5 of this case which is again *peshed* to-day, that the Divisional Inspector Babu reached the place of occurrence on the 30th August at 11 a.m., for supervising this case; but it does not appear, either from the said Diary, or from any one of the Diaries up to the Diary No. 15, on what date and in what time he returned since then. It is, therefore, ordered that you shall submit the particulars of his return by entering the same in the Diary. The 11th September, 1900.

(Signature illegible),
Head Mohurir.

No. 1768.

Received 12th September, 1900.

LUKHI KANTA,
Writer Constable.

Submitted—

That the Divisional Inspector Babu supervised the case, being present at the place of occurrence on the 30th and 31st of August, and on the 1st, 2nd, 3rd, and 5th of September. There are entries in the Diary of the dates on which he subsequently went to and returned from the place of occurrence. The 16th September, 1900.

OSMAN ALI,
Sub-Inspector.

No. 3635.

Ordered that it is returned for showing in the Diary of what date and in what paragraph the date and hour of his return after his first visit to the spot are mentioned.

(Signature illegible.)
W. Y. R.,
D. S.

The 17th September, 1900.

No. 6221.

No. 1817.

Received—18th September, 1900.

(Signature illegible.)

Submitted that.

(Signature illegible.)

EXHIBIT A52.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

Submitted—

That arrival is mentioned in paragraph 5, and departure is mentioned in paragraph 12 of Diary No. 20 of the 14th September. Again, arrival is mentioned in paragraph 2, and departure is mentioned in paragraph 4 of Diary No. 21 of 15th September. This is submitted. The 21st September, 1900.

OSMAN ALI,
Sub-Inspector.

No. 3721.

The Inspector Babu left the place of occurrence between the 30th August and the 9th September. As there was no information submitted in that connection, so the *purwana* was issued. It is, therefore, necessary that the Office should get answer on that point. Nothing was asked as to what happened on the 14th September or afterwards. It is, therefore, returned. The 22nd September, 1900.

No. 6356.

No. 1888.

Received—24th September, 1900.

(Signature illegible.)

W. Y. R.,
D. S.

Submitted—

As it (information) was not recorded, I have no explanation on this point. The 25th October, 1900.

OSMAN ALI,
Sub-Inspector.

Ordered that it be put up with the record. The 25th October, 1900.

B. C. M. I.,
for D. S.

EXHIBIT A53.

A. PENNELL,
Session Judge.

The 16th January, 1901.

PURWANA TO THE SENIOR SUB-INSPECTOR, STATION SUDHARAM, DATED THE 6TH OCTOBER, 1900.

No. 6552.

Senior Sub-Inspector in charge of Station Sudharam.

Diary No. 25 of the 2nd October, 1900, in case under Section 302, of Indian Penal Code, No. 13, of the month of August, being *peshed* this day, it is ordered, that recognizance be taken from witness Mohabbat Ali, of Chur Uria. This witness knows that the accused Sadak Ali, accompanied by his wife, was going to his son-in-law's house at sunrise on the day following the night of the occurrence. The 6th October, 1900.

(Signature illegible.)

No. 1977

Received—11th October, 1900.

(Signature illegible.)

Submitted—

That agreeably to order recognizance has been taken from witness Mohabbat Ali and that the same is submitted to Court along with my report. The 14th October, 1900.

OSMAN ALI,
Sub-Inspector.

Ordered that it be put up with the record.

W. Y. R.,
D. S.

The 16th October, 1900.

EXHIBIT A54.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

Copy of remarks made by the District Superintendent of Police, Noakhali, in Diary No. 5 in case No. 13 of August, 1900, Police Station, Sudharam.

Idris Mia ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

"The Sub-Inspector does not seem to have questioned the accused as to the actual occurrence or whether they were present. The Inspector must see that important points are made quite clear."

W. Y. REILY,
D. S. P.

The 1st September, 1900.

Copy forwarded to the Inspector A Division for information and guidance.

W. Y. REILY,
District Superintendent of Police, Noakhali,

Dated Noakhali Police Office,
The 3rd September, 1900.

On back.

Diaries Nos. 5 and 6 read together will show the substance of the defence taken by the accused. The 7th September, 1900.

OSMAN ALI,
Sub-Inspector.

No. 821.

Received.

(Signature illegible.)

The 8th September, 1900.

EXHIBIT A55.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

No. 6065.

SUMMONS TO WITNESSES.

No. 1752.

Received—10th September, 1900.

LUKHI KANTA,
Writer-Constable.

Made over to Ismail Constable.

Form of summons, Sections 160 and 175, Criminal Procedure Code.

Summons to—

1. Torap Ali, son of Bukshi Chowkidar.
2. Wased.
3. Islam, father's name not known.
4. Hosain Ali.
5. Abdul Lutiff.
6. Arsod Ali.
7. Rajjab Ali.
8. Mohabbut Ali.
9. Abdul Mojid.
10. Abdul Aziz.
11. Azgar Ali.
12. Islam.
13. Ahamad Ali.
14. Atar Ali.
15. Abdul.
16. Amzad Gachi
17. Ahmedulla.
18. Abdul Aziz, Constable.
19. Keramat Ali.
20. Abdul Aziz.
21. Nand Kumar Das.
22. Abdul Gunny.
23. Mohabbat Ali Miaji.
24. Hyder Ali.
25. Nur Mia.
26. Arsud Mia.
27. Nand Kumar Chuckerbutti.
28. Amir Khan.
29. Amiruddin.
30. Samad Ali.
31. Atar Ali, inhabitants of Chur Uria, Thana Sudharam.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali ... ... *Accused.*

Case under Section 302.

Whereas you have been cited as witnesses in the case on behalf of the complainant, it is necessary that you should be in attendance for the purpose of giving evidence. You are, therefore, ordered to appear before me in Office, on the 12th September of the current year, at 8 a.m. Don't fail to appear as directed.

W. Y. REILY,
District Superintendent of Police,
Noakhali.

The 10th September 1900.

(On back.)

Abdul Aziz.
Keramat Ali.
Amir Khan, of Chur Salla.
Azgar Ali.

Arshad Ali.
(Illegible.)
Arshad Ali.
Abdul Aziz, of Chur Uria.
Ahmed Ali, of Chur Uria.
Samad Ali.
Atar Ali.
(Illegible.)
Torap Ali.
Hosain Ali.
Nand Kumar Chuckerbutti.
Mohabbat Ali.
Abdul Mia.

Submitted, that return for the service of the summons has been submitted by the Constable on a separate piece of paper, which is sent herewith.

LUKHI KANTA,
Writer-Constable.

The 11th September 1900.

EXHIBIT A56.

A. PENNELL,
Sessions Judge

The 16th January 1901.

RETURN OF THE SERVICE OF SUMMONS BY ISMAIL, CONSTABLE, DATED THE 11TH SEPTEMBER 1900.

I beg to submit that the accompanying summons No. 6065 of the Office having been made over to me for service, I visited the locality, and found witnesses, No. 7, Rajab Ali; No. 1, Torap Ali; No. 9, Abdul Majid; and No. 16, Amjad Gachi, and I served the summons by putting a copy thereof in the hand of each of them, in the presence of Koilash Chunder Dhupi and Tarak Chunder Das, of Chur Uria. Then in the presence of Bewu Mia of Chur Uria and Amiruddin Majhi of Sallah, I found witnesses, No. 19, Keramat Ali; No. 10, Abdul Aziz; No. 4, Hossain Ali; and No. 8, Mahabbat Ali, and served a copy of the summons on each of them by placing the same in his hand. Witness No. 21, Nand Kumar Das not being found, the copy of the summons in his name has been served at his house by attachment thereof to his hut, in the presence of Koilash Chunder Dhupi and Tarak Chunder Das, of Chur Uria. I found witnesses, No. 30, Samad Ali, and No. 13, Ahmad Ali, and served a copy of the summons on each of them personally, in the presence of Chowdhry Mia, Akram Ali, and Kolim Mia, of Salla; and, as I could not find witness No. 22, Abdul, I served the summons by having the same hung up to his dwelling-house. Witness No. 18, Abdul Aziz, Constable, not being found, I served the summons by having the same hung up at his dwelling-house in like manner in the presence of Abdul Hossein, of Chur Uria. Witness No. 17, Ahmedulla, was found, and the summons in his name was personally served on him in the presence of Tomizuddin and Ashraf Ali, of Chur Uria. Witness No. 3 not being found, the summons in his name was hung up to his dwelling-house, and thus served in the presence of Ibrahim and Musa Mir, of Chur Uria. Witnesses No. 26 and 24, Arshad Ali and Hyder Ali, being found, the copies of the summons in their respective names were personally served on them in the presence of Sadak Ali and Nazamuddin, of Chur Uria. Witness No. 25 (?), Abdul Gunni, not being found, the copy of the summons in his name was put into the hands of his brother, Manu Mia, living in the same mess with him, and was thus served in the presence of the above persons. Witness No. 28, Amir Khan, was found, and the copy of the summons in his name was handed over to him, and thus served in the presence of Fazul Rahaman, of Chur Uria. Witness No. 20, Abdul Aziz, and witness No. 11, Azgar Ali, being found, the copies of the summons in their names were personally served on them respectively, in the presence of Ahmed, of Chur Uria. Witness No. 6, Arshad Ali, was personally served with the summons, in the presence of Arshad Mia and Mahomed Hosain, of Chur Uria. Witness No. 5, Abdul Lutiff, not being found, the copy of the summons in his name was handed over to his brother, Abdul Hamid, living in commensality with him, and was thus served. Witnesses No. 29, Amiruddin, and No. 27, Nund Kumar Chukrabatti, were found, and the copies of the summons in their names were personally served on them, in the presence of Akpan Ali, of Chur Uria, and Yakub Ali, of Dhorampurah. Witness No. 23, Mohabbat Ali, being found, the copy of the summons in his name was placed in his hand, and thus served in the presence of Rohim Buksh, of Chur Uria, and Yiasin, of Salla. Witness No. 31, Ator Ali, was served with the copy of the summons in the presence of Yakub Ali, now residing at Chur Uria, and got his signature in the original summons; and it was in the presence of the said Yakub Ali that the summons to witness No. 25, Nur

Mea, was affixed to his dwelling-house, and thus served. There were two summonses issued to witness No. 12, Islam, and Constable Mohesh Singh having served one of them, submitted a separate return in respect thereof. The other summons in his name, and one of the two summonses in the names of witness No. 14, Atar Ali, and witness No. 13, Atar Ali, who were stated by the complainant to be the same man, and on whom only one summons was served, are sent back herewith. The 11th September, 1900.

ISMAIL,
Constable.

EXHIBIT A57.

A. P. PENNELL,
Sessions Judge.

The 16th January, 1901.

EXHIBIT A58.

A. PENNELL,
Sessions Judge

The 16th January, 1901.

SUMMONS TO WITNESS ISLAM (II.)

Form of Summons, Sections 160 and 175, Criminal Procedure Code.

Summons to Islam (II) of Chur Uria, Station Sudharam.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali ... ... *Accused.*

Case under Section 302.

Whereas you have been cited as a witness in the above case on behalf of the complainant, it is necessary that you should appear for giving evidence. You are, therefore, ordered to be in attendance before me in office on the 12th September, of the current year, at 8 a.m.

fail to appear as directed.

W. Y. REILY,
District Superintendent of Police,
Noakhali.

The 10th September, 1900.

EXHIBIT A59.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

SUMMONS TO WITNESS ATAR ALI, DATED THE 10TH SEPTEMBER, 1900.

Form of Summons, Sections 160 and 175, Criminal Procedure Code.

Summons to Atar Ali, of Chur Uria, Thana Sudharam.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali ... ... *Accused.*

Case under Section 302.

Whereas you have been cited as a witness in the above case, on behalf of the complainant, it is necessary that you should appear for giving evidence. You are therefore ordered to be in attendance before me in office on the 12th September, of the current year at 8 a.m.

Do not fail to appear as directed.

W. Y. REILY,
District Superintendent of Police,
Noakhali.

The 10th September, 1900.

EXHIBIT A60.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

PETITION OF TORAB ALI, ATAR ALI AND OTHERS OF CHUR URIA STATION SUDHARAM, TO THE DISTRICT MAGISTRATE, DATED THE 21ST SEPTEMBER, 1900.

IN THE COURT OF THE DISTRICT MAGISTRATE OF NOAKHALI.

We, Torab Ali, son of the late Bukshi Chowkidar, and Atar Ali, son of Moharuddi, inhabitants of Salla, and Abdul Aziz, son of Amanuddin Miji, Rajjab Ali, son of Roshan Ali, Hassan Ali, son of Mahomed Kamil, Abdul Mojid, son of Motiulla, Nur Mia, son of Gura Gaji and Haider Ali, son of Bakshi Patwari, inhabitants of Chur Uria, Thana Sudharam, beg to state as follows :—

In the case of the murder of Ismail Jaigirdar of Chur Uria, the District Superintendent of Police took up the investigation agreeably to the order of this Court, and we have given evidence before him in support of the complainant's case. The investigation was at first being conducted by Osman Ali Mia, Sub-Inspector attached to the Sudharam Thana ; but the said Ismail Jaigirdar's son apprehending that the accused persons being relatives of the said sub-inspector and his *baibahik* Amjad Mia and being on friendly terms with them there would be no proper enquiry made by him, filed a petition in this Court, whereupon the Court entrusted the District Superintendent of Police with the charge of holding investigation in the case. The Daroga Saheb aforesaid requested us in various ways not to give evidence in the case. But we did not act up to his dictates, and we deposed to what we actually knew before the District Superintendent. On that account the said Daroga being greatly annoyed with and infuriated against us and the complainant's party and the advocates of his cause, Sadak Ali and others, and since he has been holding out such threats both in our presence and in our absence, that we have got extremely frightened. Last Saturday (30th Bhadra, *i.e.*, 15th September) the District Superintendent of Police was accompanied by the said Daroga in his visit to the spot for local enquiry. After the departure of the District Superintendent we too were going back to our houses when we met the Daroga at Peshkar's *hat* on the way. He abused us in various ways and threatened us in these terms, *viz.*, (he will) "pour down water on the head," "put us into jail" "compel us to leave the country" and so forth. The people also came to know that the Daroga was really indignant at us. We are poor people and Osman Ali, who is a man of property living within the jurisdiction of the Sadar Thana, and who holds a high post in the local police, can easily put people like us into trouble if he like to do so. We are not in a position to sue him in a proper Court, and to oppose him as his rivals. The court is our Protector and is also the master of the said Daroga. We, therefore, pray that the Court may be pleased to keep an eye on us, so that no oppression can be practised on us. The 21st September, 1900.

Writer,
SHYAMA CHURN RAI,
Mohurir.

No. 588.

To

District Superintendent of Police for note and return.

(Illegible).
D. M.

The 21st September, 1900.

TORAB ALI.
HASSAN ALI.
HAIDER ALI.
ABDUL AZIZ.
RAJJAB ALI.
ATAR ALI.
NUR MIA.
(By mark),
ABDUL MOJID,
(By mark).

EXHIBIT A61.

A. PENNELL,
Sessions Judge.

The 16th January, 1901.

No. 6006.

PURWANA TO THE SUB-INSPECTOR OF POLICE, SUDHARAM, DATED THE 7TH SEPTEMBER, 1900.

To

The Sub-Inspector in charge of Station Sudharam.

Agreeably to the order passed by the Magistrate you are hereby directed to inform Idris Mia, complainant, in case No. 13 of your station for the month of August under Section 302, Indian Penal Code, that he is directed to appear before me at Sudharam Station with the witnesses, who will prove the case, on the 9th day of this month. You are to send per bearer a receipt acknowledging that he got the information through you. The 7th September, 1900.

No. 1730.

Received on 7th September, 1900.

(Signature illegible.)
W. Y. R.,
District Superintendent.

(On back.)

I have read the order, and I am acquainted with its contents. The 8th September, 1900.

IDRIS MEA.

Names of witnesses in whose presence the order was shown :—

1. Naimuddi Miji.
2. Apsaruddi Bhuia.
3. Arsad Mia.
4. Miajan Bepari.
5. Keramat Ali.
6. Yakub Ali of Chur Uria.
7. Wajuddi Khalifa of Chur Salla.

Submitted that the order has been communicated to the complainant in the presence of the parties whose names are given in the margin. The complainant read the order and then put his own signature. Submitted for information. The 8th September, 1900.

OSMAN ALI,
Sub-Inspector.

Ordered.

That it be put up with the record, the 12th September, 1900.

W. Y. R.,
District Superintendent of Police.

EXHIBIT B1.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

No. 1.

SPECIAL DIARY, SECTION 172, CR. P. C., POLICE STATION, OUTPOST.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of 1st Information Report.—No. 13, dated the 26th August, 1900.

Names of persons arrested and sent up.

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.

N.B.—In final Diary value of property stolen and recovered to be stated, also Form in which Final Report submitted. The instructions of Rule 65 (*c*) and (*d*), Chapter XVI., of Bengal Police Code, to be carefully observed.

Date and hour—9th September 1900, 11 A.M. Circuit house.

On the 6th instant, the complainant petitioned Magistrate that some persons deposed before the Police that the accused actually caused the death of his father, but the Investigating Officer (Sub-Inspector Osman Ali), to whom they are directly or indirectly related, took no action against them, and that the Supervising Officer (Inspector Bharat Chunder Mozumdar) was also doing nothing.

Under orders of the Magistrate, on complainant's petition, I directed on the 7th the complainant to produce his witnesses before me. He turned up to-day and pleaded his inability to produce them without issue of summonses. I have recorded his statement under Section 161, Criminal Procedure Code, and directed him to submit a list of witnesses.

Date and hour, 6 P.M. Circuit house.

The complainant failing to submit his list of witnesses up to this hour, I close to-day's Diary.

W. Y. REILY,
District Superintendent.

The 9th September, 1900.

EXHIBIT B2.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

STATEMENT OF IDRIS MEA, SON OF ISMAIL JAIGIDAR, OF CHUR URIA.

I cannot bring my witnesses without their being summoned. I do not know the names of all the witnesses. Torap Ali, son of Bukshi Chowkidar of Chur Uria, Wasil, father's name not known, of Chur Uria, and Abdul Karim, father's name not known, of Chur Uria, Ismail, father's name not known, are my witnesses. Besides these, I do not know the names of any other witnesses. Some of the above witnesses saw my father killed. These witnesses were examined by the Sub-Inspector. I heard from the villagers that some of the above witnesses told the Sub-Inspector that they had seen my father killed. Who told me I cannot remember. Besides the above, I can produce other witnesses, and can submit a list of them. I know nothing about the occurrence.

W. Y. REILY,
District Superintendent.

The 9th September, 1900.

EXHIBIT B3.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

No. II.

SPECIAL DIARY, SECTION 172, CR. P. C., POLICE STATION OUTPOST.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali ... ... *Defendant.*

Section ——, Indian Penal Code.

Number and date of 1st Information Report.—No. 13, dated 26th August, 1900.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.

The complainant having submitted his list of witnesses, I have directed my Office to issue summonses through the Sudder Station under my signature calling them to appear before me, on the 12th at 8 a.m. at the Police Office.

Date and hour—10th September, 1 P.M., Police Office.

The diary is closed.

W. Y. REILY,
District Superintendent.

The 10th September, 1900.

P.S.—The list of witnesses is annexed.

W. Y. REILY,
D. S.

The 10th September, 190

EXHIBIT B5.

The 17th January, 1901.

A. PENNELL,
Sessions Judge.

No. III.

SPECIAL DIARY, SECTION 172, CR. P. C., POLICE STATION OUTPOST.

Idris Mea ... ... *Complainant,*

versus

Sadek Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of 1st Information Report.—No. 13, dated the 26th August, 1900.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.—

N.B.—In Final Diary, value of property stolen and recovered to be stated; also form in which Final Report is submitted. The instructions of Rule 65 (*c*) and (*d*), Chapter XVI. of Bengal Police Code, to be carefully observed.

1. The complainant submits a list of witnesses present—*vide* the enclosure. I shall examine these witnesses one by one.

Date and hour—12th September, 1900, 1.30 P.M., Police Office.

2. Examined witnesses 1, 2 and 3, and recorded their statements under Section 161 Criminal Procedure Code.

1.30 P.M. to 4.30 P.M.

Witness No. 4, Latif, knows nothing of the occurrence, ascertained from him that deceased was on bad terms with the accused.

1, Hasan Ali; 2, Torab Ali; 3, Islam.

Recorded statement of witness No. 5, Rajjab Ali, under Section 161, Criminal Procedure Code.

Questioned the marginally-named witnesses; they know nothing of the occurrence. Ascertained from them that the accused were on bad terms with the deceased. Witness No. 18 disappeared.

6, Nur Mea; 7, Abdul Aziz. 8, Abdul; 9, Keramat Ali; 10 Abdul Karim; 11, Azgar Ali; 12, Nanda Kumar Chakerbutty; 13, Nanda Kumar Das; 14, Hyder Ali; 15, Mohabbat Ali; 16, Abdul Majid; 17, Abdul Aziz; 19, Arshad Ali; 20, Arshad Mia; 21, Samed Ali.

Recorded the statement of witness No. 22, Atar Ali Section 161, Criminal Procedure Code.

Examined the marginally-named witnesses. They know nothing of the occurrence. They knew that the accused were on bad terms with the deceased.

23, Amirnddin; 24, Amjad Gachi; 25, Sadak Ali; 26, Wasil; 27, Ahmadulla; 28, Amir Khan.

Witness No. 29, Amjad, disappeared, The complainant does not wish to examine him and witness No. 18.

Questioned witness No. 30, Abbas Ali, who knew nothing of the occurrence.

Recorded the statement of witness No. 31, Abdul Aziz, under Section 161, Criminal Procedure Code.

EXHIBIT B6.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

4.30 P.M., Police Office. Questioned witness No. 32, Ahmad Ali who knows nothing of the occurrence.

I close to-day's diary.

W. Y. REILY.

The 12th September, 1900.

REMARKS.

I have ordered the Sudharam Police to inform the accused to appear before me to-morrow, at noon.

W. Y. REILY.

The 12th September, 1900.

EXHIBIT B8.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

STATEMENT OF HOSEIN ALI, WITNESS NO. 1.

My name is Hosein Ali, father's name Mahomed Kamil, resident of Chur Uria, Police Station Sudharam.

I saw accused Sadak Ali, Aslam and Anwar Ali, catch the deceased by the neck and waist on the night of a Saturday. I do not remember the date. It was in Bhadro. The first accused held him by the neck, the other two held him by the waist. They seized deceased near deceased's house on the public road, about 2 or 3 *kanis* to the east. It was about 6 *ghoris* of the night. It was dark, it had been raining but the rain had stopped then. The deceased called out "*Mago mago*" when he was seized. I saw deceased seized by the flashes of lightning. Torap Ali was also with me then; he also saw deceased seized. I saw deceased seized from a distance of 6 cubits. We saw the above accused carrying deceased towards the back of his house. I and Torap Ali spoke to the accused, "why are you beating Ismail Jagirdar?" they replied, "you get away" saying which they went towards the tank. We did not give information to the relatives of the deceased. The deceased house is about 3 *kanis* from the place where deceased was seized. We shouted, when three persons came to the bank of the tank, and saw the occurrence. I cannot give their names. I and Torap Ali saw the deceased seized, but did not see him killed. I and Torap Ali went to our houses. We did not go to Ismail Jaigirdar's house I did not tell this to my wife, mother, or any members of my household. I enquired from Chowkidar Osman Ali's mother, whether he (Osman Ali) was at home; she said he was absent. We mentioned the occurrence to Osman Ali's mother. We also told this to Atar Ali whom we met at the gate-way of Hor Chandra's house. We were going home from Bellew Sahib's *hat*. On the following morning at about 4 *ghoris*, I heard that Ismail Jaigirdar was killed, even then I did not mention the occurrence to my relatives, or to any other persons. My house is about a mile from deceased's house. I have no enmity with the aforesaid accused.

I was examined by Sub-Inspector Osman Ali, and made similar statement to him, The inspector did not question me. I have never been punished in a criminal case.

W. Y. REILY,
District Superintendent.

The 12th September, 1900.

EXHIBIT B9.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

EXHIBIT B10.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

STATEMENT OF TORAP ALI, WITNESS NO. 2.

My name is Torap Ali, father's name Bakshi, resident of Salla, Police Station Sudharam.

My house is about 2 kanis from Hosan Ali's house. I saw Ismail Jagirdar killed by Sadak Ali, Aslam and Anwar Ali; some other persons also seized the deceased, but I could not recognise them; these persons came afterwards, they were five or seven in number. About 10 persons in all seized the deceased. It was on the night of a Saturday. It was in the month of Bhadro; I do not know the exact date. The occurrence took place to the east of Ismail Jagirdar's tank in front of his house, on the road which leads to his house; the distance where the deceased was seized to the tank is about 9 *nals*. He now says he did not see the deceased killed. Accused Sadak Ali seized the deceased by the neck, Anwar Ali held him by the legs, and Aslam held him by the waist, and how the other seven persons held him I cannot say. All the 10 accused carried the deceased to the tank. I cannot say what they did with him. I and Hosan Ali were together; we were returning home from Bellew Sahib's *hat*. We did not follow the accused. We called out, "why are you killing this man?" they replied, "go away." We raised an outcry, but no one came. The night was dark and it was raining a little. We saw what was taking place by the flashes of lightning. We did not mention anything to the inmates of Ismail Jagirdar's house. We did not go to his house. Through fear we did not say anything about it. We met Atur Ali near Asabuddi's house on the public road (Trunk-road) to whom we mentioned that Sadak Ali and others were killing Ismail Jagirdar. I know Hor Chundra. A road runs between Ashabuddi's and Hor Cundra's *bari*, the distance between them is about 4 *kanis*. Both their houses are surrounded by *supari*, cocoanut and *madar* trees. The gate-ways of both the houses face the east. Where we met Atur Ali, is about half a mile from Hor Chundra's house. I did not mention the occurrence to any one of my house-hold except my wife, Sona Banu or to any one else that night. On the following day I did not say anything to any one. We went to the gate-way of Chowkdar Osman Ali's house and called out to him, his mother replied he was not at home. We informed Osman Ali's mother of the occurrence from the gate-way. On the following morning I heard that Ismail Jagidar was killed. I did not see his body. We did not see Osman Ali's mother.

I was examined by Sub-Inspector Osman Ali to whom I made a similar statement. Nanda Basi, Nanda Thakur, Hosan Ali and some others were present when I gave my evidence to the Sub-Inspector. The Inspector did not examine me. I was once fined in a "*mar pit*" case. Osman Ali *challaned* me. Hosan Ali did not give evidence in that case, he is not related to me. It was about 4 *gharis* of the night when Ismail Jagidar was seized by the accused. I am not related to Ismail Jagirdar. Save Hosan Ali and I no one else saw the occurrence. Through fear we did not attempt to rescue the deceased from the accused. When deceased was seized, he called out "*mago, mago, marilo, re, marilo re.*" We did not give information to the Thana through fear. I and Hosan Ali were examined by the Sub-Inspector on the Tuesday, 7th or 8th of Bhadra. We were examined at about 1 *prohar* of the day.

W. Y. REILY,
District Superintendent.

The 12th September, 1900.

EXHIBIT B11.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

EXHIBIT B12.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

STATEMENT OF ISLAM, WITNESS NO. 3.

My name is Islam, father's name Mohamed Diam, resident of Chur Uria, Police Station Sudharam.

I saw Sadak Ali, Aslam, Eakub Ali and Abdul Halim carrying a man towards the west, along the bank of the tank near Ismail Jaigirdar's house. I cannot say whether the man was dead or alive. It was about 1 *prohar* of the night. The night was dark, but it was not raining then. I saw this by the flashes of lightning. When I asked who they were, Sadak Alik rushed upon me and said "be off." I was returning home from Karim Buksh's house. I went to his house to ask him to settle a civil-case between me and Aslam, Buksh Ali and Emeret (?) Ali. I could not recognize who the person was, whom the above persons were carrying. On the following morning I heard Ismail Jaigirdar was killed. I have no cases with the four accused. Ismail Jaigirdar is not related to me. I am not on bad terms with the accused. My *bari* is about three quarters of a mile distant from Ismail Jaigidar's *bari*. On my way home I met Naimuddin Miaji, Abdul Hakim Kaviraj and another man, whose name I do not know, at the gate-way of Naimuddin Miaji. They were all seated together. I informed them of what I had seen. I also told this to Abdul Aziz to whom I called out, to come and accompany me to my house, which he did. I did not say anything to any one of my household, or to any one else. On the following morning I heard that Ismail Jaigirdar was killed, even then I did not inform any one of the occurrence. I was examined by Sub-Inspector Osman Ali and stated similarly. I do not recollect who were present at the time. I was examined on a Tuesday. I do not recollect the date. The Inspector did not examine me. I do not recollect whether I was punished in any criminal case. Then he says I was fined in a "*marpit*" case. I was the only accused in the case. I am not related to any of the witnesses in this case.

EXHIBIT B13.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

W. Y. REILY,
District Superintendent.

The 12th September, 1900.

EXHIBIT B14.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

STATEMENT OF RAJOB ALI, WITNESS NO. 5.

My name is Rajob Ali, father's name Rosan Ali, resident of Chur Uria, Police Station Sudharam.

I did not see any one kill Ismail Jaigirdar. On a Saturday, 9th Bhadro, before sunset I saw Sadak Ali, Aslam, Abdul Halim and Anwar Ali sitting together under a *bot* tree on the side of the public road (*sarkari* road), about a mile from the house of Ismail Jaigirdar. I know nothing further about the occurrence. I am not related to any party. I am a *ryot* of the Bhulua zemindar. I do not know if Ismail Jaigirdar belonged to the Bhulua zemindar. I was examined by the Sub-Inspector on last Wednesday and made similar statement. I was imprisoned for two months in a riot case about two years ago. I do not recollect the name of the Sub-Inspector who sent me up.

W. Y. REILY,
District Superintendent.

The 12th September, 1900.

EXHIBIT B15.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

STATEMENT OF ATAR ALI, WITNESS NO. 22.

My name is Atar Ali, father's name Maharuddi, resident of Chur Salla, Police Station Sudharam.

I did not see the occurrence regarding the killing of Ismail Jaigirdar. Hasan Ali and Torap Ali met me at the gateway of Nobin Dutta's house at about 6 *gharis* of the night of Saturday, 7th or 8th Bhadro. I know Hur Chundra. He is Nobin Dutta's brother. They

live in the same *bari*. Hasan Ali and Torap Ali said that Sadak Ali and Aslam and Abdul Halim and Anwar and others were beating Ismail Jagirdar. They said that only these four persons assaulted Ismail Jagirdar. They further said that they ran away through fear. The distance between my *bari* from that of Ismail Jagirdar's house is about quarter of a mile. I did not mention this to any of the inmates of Ismail Jagirdar's household. I did not mention this to any person. I know nothing further.

W. Y. REILY,
District Superintendent.

The 12th September, 1900.

It was twilight when I met Hosan Ali and Torap Ali, it was not evening. They said they saw the accused by the flashes of lightning.

W. Y. REILY,
District Superintendent.

The 12th September, 1900.

EXHIBIT B16.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

STATEMENT OF WITNESS NO. 31, ABDUL AZIZ.

My name is Abdul Aziz, father's name Amanuddin Miajhi, resident, Chur Uria.

I did not see who killed Ismail Jagirdar. On a Saturday night Islam (witness No. 3) told me that he saw a body being carried by Sadak Ali and Aslam and some two others; he could not recognise whose body it was, they were carrying the body along the south bank of the tank in front of Ismail Jagirdar's house. It was about 4 *ghoris* of the night. He called out to me from my gateway. I came out when he told me the above, and I accompanied him to his house as he was afraid. Islam's *bari* is over quarter of a mile from mine. Islam if not related to me. I accompanied him about two or three *kanis*. The night was dark. It was not raining then. It was too dark to see anything. I was examined by Sub-Inspector Osman Ali at Peshkar's *hat*. I do not recollect the date, it was a Sunday or Thursday. I made a similar statement before him.

W. Y. REILY,
District Superintendent.

The 12th September, 1900.

EXHIBIT B17.

A. P. PENNELL,
Sessions Judge.

The 17th January, 1901.

STATEMENT OF LONA BANU, WIFE OF WITNESS TORAP ALI.

My husband told me that one night he had seen four persons carrying a person, how they were carrying him he did not say, did not ask any question. He did not say anything more. It was about 1 *prohar* of the night when my husband told me about this. I did not mention what my husband told me to anyone else. I do not remember the date or day of the week.

W. Y. REILY,
District Superintendent.

The 14th September, 1900.

EXHIBIT B18.

A. P. PENNELL,
Sessions Judge.

The 17th January, 1901.

No. IV.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION OUT-POST.

Idris Mia ... ... *Complainant.*

versus

Sadak Ali and others ... ... *Defendants.*

Section 302, Indian Penal Code.

Number and date of 1st Information Report—No. 13, dated the 26th August, 1900.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c. Section 169, Criminal Procedure Code.

Date and hour—13th September, 2 P.M., Police Office.

1. The following accused persons appeared before me :—

1. Sadak Ali.
2. Abdul Hakim.
3. Abdul Karim.
4. Abdul Halim.
5. Aminuddi.
6. Aslam.
7. Yakub Ali.
8. Osman Ali.
9. Fazar Ali.
10. Anwar.
11. Emdadulla.

2. Questioned accused No. 1.—He pleades not guilty and states as follows :—

2 P.M., Police Office.

I gave evidence against deceased Ismail Jagirdar in a cattle theft case, and he was fined Rs. 20, the complainant therefore brought a false charge against me. I hear that Nanda Basi Dass, Nanda Thakur and Amir Khan, touts, who wanted money from us, are concocting evidence against us, as we refused to give them money. They wanted Rs. 200 from us. One Sadak Ali has an intrigue with deceased's wife (complainant's mother), so it is probable that he might have committed the deed, or had it committed by some persons. He joined the above touts in concocting evidence against us. They gained over some *badmashes*, such as Nur Mia, Atur Ali, Rajjab Ali, Islam, Goleea, Hosan, Ali, and others. I saw Nanda Basi and Amir Khan taking these *badmashes* to Ashraf Ali *mukhtear* of Montiargonah. The deceased was a friend of Ashraf Ali *mukhtear*. I am not related to Sub-Inspector Osman Ali or to Amjad *punchayet*.

EXHIBIT B19.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

Date and hour—3 P.M., 3rd March, 1901, Police Office.

3. Questioned.—Abdul Hakim, who pleaded not guilty and states as follows :—

I was not at home on Saturday on which the deceased is stated to have been killed. I am a *Kobiraj*. I left home on the previous Wednesday, and returned on the following Monday. During my absence Nanda Basi, Nanda Thakur, and Sadak Ali wanted money Rs. 200 from other accused ; they refused. On my return, I also refused. For this reason they have been concocting evidence against us. I heard from Amiruddi and others that they persuaded Ismail, Tarap Ali, Atur Ali, Rajjab Ali, and other *badmaishes* to give evidence against us, and had the complainant to prefer a petition to the magistrate. I heard from rumour that Sadak Ali and Nanda Basi took these witnesses to *mukhtear* Safor Ali master, Josoda Babu, and Ashraf Ali Munshi. Sadak Ali has undue intimacy with the wife of deceased. It is not impossible that he might have done away with the deceased to remove an obstacle to his intrigue.

Questioned Abdul Karim.—He denied the charge, and says about 10 years ago the deceased sued him in the Civil Court for the possession of some land. He, the accused gained the case.

4. Questioned Abdul Halim.—He denied the charge. He had no enmity with the deceased. He cannot say why he was entangled in the case. Nanda Basi, Nanda Thakur and Amir Khan informed him and other accused, except Abdul Hakim *Kobiraj*, that they were charged by the complainant, and demanded Rs. 200. We refused to pay. These persons are *badmashes* and belong to a gang of *badmashes*. He learns that they have been persuading *badmashes* to give evidence against us. Rajab Ali, Torap Ali, Ismail, Hossein, Atur Ali, Nur Mia, and others, he learns, have been persuaded by Nunda Basi, Nunda Thakur and Amir Khan to give evidence against us.

3.30 P.M., Police Office.

5. Questioned Amiruddin.—He also pleads not guilty, and believes that Nunda Basi, Nunda Thakur, and Amir Khan, who are village touts and earn their livelihood by touting, persuaded complainant to bring a false case against them. When Sub-Inspector Osman Ali went to the spot these persons demanded money from them.

4 P.M. to 4.30 P.M.

Questioned Aslam.—He states that the deceased sued him in the Civil Court for rent; the case is still pending. Makes similar statements to the aforementioned accused.

Questioned Yakab Ali.—Denies the charge, and believes that at the instigation of Nunda Basi, Nunda Thakur, and Amir Khan, he has been entangled in this case for their own benefit. They demanded Rs. 200, but he and other accused refused to give the money.

Questioned accused Osman Ali Chowkidar.—He denies charge and does not know why he was entangled in the charge. He makes a statement almost similar to accused No. 4.

Exhibit B21.
A. PENNELL,
Sessions Judge.
The 17th January 1901.

Questioned Fazar Ali.—Denies the charge and does not know why he has been entangled in the case. Believes that Nunda Basi, Nunda Thakur, Amir Khan, and Sadak Ali have been concocting evidence against the accused, as they refused to pay Rs. 200. He learns they gained over Nur Mia No. 1, Nur Mia No. 2, Mohabbat Ali, Torab Ali, and others to give false evidence against them.

Questioned Anwar Ali.—Denies the charge. He had no enmity with deceased.

4.30 P.M., Police Office.

Questioned Emdadulla.—Denies the charge and states as follows:—

I learn that the wife of the deceased was enticed away by Sadak Ali, and there was a case between deceased and Sadak Ali. Sadak Ali has undue intimacy with deceased's wife. It is not impossible that he did away with the deceased to remove an obstacle. Nunda Basi, Nunda Thakur and Sadak Ali wanted money from us; Osman Ali went to the spot. We refused payment. They threatened us. They, with the aid of Asraf Ali, Mukhtar, petitioned the Magistrate against us. I heard that Jasoda Mukhtear also advised them. They also went to Sofar Ali Mukhtear. I do not know if he gave them any evidence. They gained over Nur Mia, Atur Ali, Torap Ali, Nur Mia No. 2, Mohabbat Ali, Rajjab Ali, Hossein, and others, so I know. I saw them the above touts consulting with them. I do not bear any relationship with Sub-Inspector Osman Ali.

Exhibit B22.
A. PENNELL.
Sessions Judge.
The 17th January 1301.

5 P.M.

5. All the accused deny to have any relationship with Sub-Inspector Osman Ali.

I close to-day's diary. I shall visit the spot to-morrow.

W. Y. REILY,
District Superintendent.

The 13th September, 1900.

EXHIBIT B23.

A. PENNELL,
Sessions Judge.

The 17th January, 1901.

No. V.

SPECIAL DIARY, SECTION 172, CRIMINAL PROCEDURE CODE, POLICE STATION OUT-POST.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali ... ... *Defendant.*

Section 302, Indian Penal Code.

Number and date of First Information Report.—No. 13, dated the 26th August, 1900.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, Criminal Procedure Code.

N.B.—In final diary, value of property stolen and recovered to be stated, also form in which Final Report submitted. The instructions of Rule 65 (*c*) and (*d*), Chapter XVI. of Bengal Police Code, to be carefully observed.

Date and hour.—The 14th September, 1900, 1 P.M., village of occurrence.

Reached the village of occurrence, and found Inspector Bharat Chunder Mozumdar, Sub-Inspector Osman Ali, Head Constable Mohirun, the complainant; his relative, Wajuddin Khalifa; and accused, Abdul Hakim, Sadik Ali, Emdadulla; witnesses Atur Ali, Rajjab Ali Islam, and several other persons were present.

3 P.M.

Commenced planning the place of occurrence, &c., with the aid of Inspector Bharat Chandra Mozumdar, Sub-Inspector Osman Ali, and Head Constable Mohirun. Witness Rajab Ali pointed out *Bot* tree, afterwards marked L, under which he saw Sadak and others sitting together. Witness Salam pointed out the spot marked H, as the spot where he saw the accused Sadak Ali, Aslam, Yakub Ali, and Abdul Halim carrying a man west when he was coming by west bank of the tank marked C, he went round the south bank, and met them at point H. He hurried off, and took the path marked H2, leading to Naimuddin Miaji's *bari*.

5 P.M.

Questioned Torap Ali's (witness) wife. Recorded her statement under Section 161 Criminal Procedure Code.

5.30 P.M.

Could not finish the Plan—ordered the complainant to produce his witnesses, Hossain Ali and Torap Ali to-morrow; left the village of occurrence.

W. Y. REILY,
District Superintendent of Police.

The 14th September, 1900.

EXHIBIT B24.

A. P. PENNELL,
Sessions Judge.

The 17th January, 1901.

No. VI.

SPECIAL DIARY OF MR. REILY.

A. P. P.

SPECIAL DIARY, SECTION 172, C. P. C., POLICE STATION OUT-POST.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali... ... ... *Defendant.*

Section 302, I. P. C.

Number and date of First Information Report.—No. 13, dated 26th August, 1900.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, C. P. C.

N.B.—In final Diary value of property stolen and recovered to be stated, also form in which final report submitted. The instructions of Rule 65 (*c*) and (*d*), Chapter XVI., of Bengal Police Code, to be carefully observed.

Reached Bellew Saheb's Hât. Met Inspector Bharat Chandra Mozumdar and Head Constable Mohim commenced to draw the plan.

Date and hour.
The 15th September 1900, 1 P.M. Askalia.

Met Sub-Inspector Osman Ali on Bairagi Hât Road.

1.30 P.M. to 4 P.M.

The complainant produced his witnesses—Torap Ali and Hossain Ali. They pointed out the place marked K as the spot where deceased was seized by accused, Sadak Ali, Aslam and Anwar Ali. Hossain Ali saw from point R. Torab Ali saw from point S, the distance between K and R is 28 cubits and that between K and S is 18 cubits. They could not assign any reason why they when returning from Bellew Saheb's Hât to their houses beyond 4th mile took a round about road instead of going by Gura Mea's road or by Ashak Zemindar's road which are the more direct roads leading to their homes—Finished the plan. Left the place of occurrence for head quarters.

Instructed Inspector and Sub-Inspector to ascertain how far the allegation of deceased's wife having an intrigue with Sadak Ali (witness) is correct.

W. Y. REILY,
District Superintendent.

The 15th September, 1900.

EXHIBIT B25.

A. P. PENNELL,
Sessions Judge.

The 17th January, 1901.

SPECIAL DIARY OF MR. REILY.

No. VII.

SPECIAL DIARY, SECTION 172, C. P. C., POLICE STATION, OUT POST.

Idris Mea ... ... *Complainant,*

versus

Sadak Ali ... ... *Defendant.*

Section 302, I. P. C.

Number and date of First Information Report.—No. 13, dated 26th August, 1900.

Names of persons arrested and sent up.—

Names of persons arrested and bailed, &c.—Section 169, C. P. C.

N.B.—In final Diary value of property stolen and recovered to be stated, also form in which final report submitted. The instructions of Rule 65 (*c*) and (*d*), Chapter XVI of Bengal Police Code to be carefully observed.

Date and hour.
The 21st September 1900.
Police Office.
3 P.M.

Examined Safar Ali, Jashoda Kumar Rai and Ashraf Ali Mokhtars and recorded their statements under Section 161, C. P. C.

W. Y. REILY,
District Superintendent.

The 21st September.

EXHIBIT B26.

STATEMENT OF MUNSHI SAFAR ALI, MOKHTAR, BEFORE MR. REILY.

My name is Safar Ali. I am a mokhtar practising in the Noakhali Criminal Courts, I know Ismail Jagirdar's son. I heard that Ismail Jaigirdar had been killed by some one. One morning, I do not know the date or the day, but it is over two weeks ago, Idrish accompanied by Nanda Bashi Das and a Mahomedan Sadak Ali, went to my house for instruction, they said that Sub-Inspector Osman Ali was doing nothing in respect of Ismail Jaigirdar's case, and that Osman Ali perhaps had been gained over by the accused and asked what they should do. I told them to wait till the final reports were submitted to the Magistrate. Nanda Basi advised Ismail Jagirdar's son Idris to pay me a rupee for my advice, which he did. I know that Idris submitted a petition to the

Exhibit B26.
A. P. PENNELL,
Sessions Judge.
The 17th January 1901.

Magistrate. I do not know the contents of the petition. I know *Mukhtear* Jashoda Babu pleaded before the Magistrate on behalf of Idris. In one or two instances I have seen Nanda Basi helping parties in cases.

W. Y. REILY,
District Superintendent.

The 21st September.

EXHIBIT B27.

STATEMENT OF BABU JASHODA KUMAR RAI, MUKHTEAR, BEFORE MR. REILY.

My name is Jashoda Kumar Rai. I know Idris, son of Ismail Jaigirdar. I submitted a petition to the Magistrate on behalf of Idris. I drafted the petition. I know Nunda Basi, Nanda Thakur and Sadak Ali. These persons went to me on several occasions on behalf of Ismail Jaigirdar's murder case. This is the petition (shown and identified) I submitted to the Magistrate.

Exhibit B27.
A. PENNELL,
Sessions Judge.
The 17th January 1901.

W. Y. REILY,
District Superintendent.

The 21st September.

EXHIBIT B28.

STATEMENT OF ASHRAF ALI, MUKHTEAR, BEFORE MR. REILY.

My name is Ashraf Ali. I know Idris, son of Ismail Jaigirdar. I knew afterwards that a petition was submitted to the Magistrate on behalf of Idris. I do not know by whom this petition was drafted. I know Nanda Basi, Nanda Kumar and Sadek Ali. These persons never went to me on behalf of Idris. I saw once or twice these persons with Idris near the *cutcheries*. Now I hear that this petition was drafted by Jashoda Babu.

Exhibit B28.
A. PENNELL,
Sessions Judge.
The 17th January 1901.

W. Y. REILY,
District Superintendent.

The 21st September.

EXHIBITS Y1 TO Y3.

POLICE REPORT (C. FORM).

(Translation.)

Despatched from Station 28th September, 1900, at 10 a.m.

BENGAL POLICE (NOAKHALI) DISTRICT.

FORM C., TRUE CASE REPORT NO. 98, DATED THE 27TH SEPTEMBER, 1900.

Exhibit Y1.
A. PENNELL,
Sessions Judge.
The 17th January 1901.

Police Station Sudharam.

in first Information No. 13, dated the 26th August, 1900.

Explanation.—Final Report under Section 173, Criminal Procedure Code, of a case inquired into, in which no clue was obtained by the Police sufficient to justify arrest, or in which no accused has been apprehended.

EXHIBITS Y2 AND 3.

Name and address of informant and complainant.	Charge or Complaint.	Description and amount of property stolen, if any.	Names of absconders against whom charge is considered proved, if any.	Brief description of the information or complaint, enquiry, and action taken, result of enquiry, names of persons accused or suspected, and names of persons acquainted with circumstances of case, house searches, with date and signatures of investigating officers.
(1)	(2)	(3)	(4)	(5)
Idris Mea. of Chur Uria, complainant.	Under Section 302 of the Penal Code.	—	—	(1) The complainant appeared at first at 9 a.m. on the 26th August, 1900, at the station and stated before me that his father, Ismail Jaigirdar, left his house at 10 a.m. on the 25th August and came to the town of Sudharem for the purpose of managing a case, and that he never returned home; that on the day following, that is, on the morning of 26th August, 1900, his dead body was found floating on the water of the tank in front of his house, that he did not know how Ismail had died, that at this information I deputed constable Kristo Chunda Bhadra to hold the enquiry, using a report generally submitted in cases of violent deaths. The Head Constable, on suspicion, sent the dead body to the Sudder Station for medical examination. After the said Head Constable had removed the dead body from the said tank, the complainant, seeing wounds on the dead body after the medical examination, did, on the 26th August, 1900, at 7½ p.m., make a statement as to the murder of his father, to this effect, that there was enmity between his father and defendants Nos. 1 to 9, and that he suspected that either these persons or some other enemies had murdered his father. Subsequently the complainant's mother, having suspected defendants Nos. 10 and 11, the names of these persons have also been included in the list containing the names of defendants. (2) The medical officer expressed his opinion that the deceased died from the effects of the wounds inflicted upon him. (3) The enquiry in this case has been held from the said 26th August, 1900, up to the present date, but without success. The Inspector of this Division came to the place of the occurrence and tested the enquiry held by me. Further, the District Superintendent visited the place of occurrence on the 28th August and on the 14th and 15th September, and examined the complainant's mother and other persons, and tested to a certain extent the inquiry made by me and he himself also made a part of the enquiry. He, with the assistance of the Divisional Inspector and with my assistance, prepared a map of the place of occurrence. The Inspector of Division B has to-day held a portion of the enquiry. (4) On enquiry it has come to light that the deceased was a person addicted to litigation, that the people residing in the neighbourhood being exasperated by his litigious habits, had become his enemies. Nor was he on friendly terms with the defendants. Even at present there is a rent case, instituted by him against the defendants Aslam and others, pending in the Court. It also appears that Rokia Banu, widow of the deceased, and mother of the complainant, is a woman of unchaste character, that since a long time past, the complainant's witness, Sadak Ali, has had illicit love with her. Some 20 or 25 years ago Sadak Ali, having seduced Rokia Banu, there was a case between him and the deceased Ishmail. The said Sadak Ali and his patrons, the village "*torni*" (*mukhtar*) Nundo Cumar, generally known as Nundbashi Das and Nundo Thakur are managing the case on behalf of the complainant against the defendants. It also appears that Sadak Ali has proposed to marry Rokia Banu in the *nekai* form and to marry his daughter to the complainant. (5) Although there is no direct evidence regarding the murder of Ismail Jaigirdar, yet there is not the least doubt that Ismail has been murdered by some of his enemies. But I have not been able to trace out any clue during such a long course of investigation, some persons entertaining mere suspicion against the defendants and some against the said Sadak Ali. The complainant has not been able to specify the exact time of the murder of the deceased. But from the evidence of the disinterested witness, Abdul Aziz, a constable employed in the district of Tipperah, and who is on leave, and Alahi Buksh, of Salla, and Ahmedulla, of Chur Uria, it appears that on the 25th August between 7 to 7½ p.m., in the night, the deceased must have been murdered by somebody. The said three witnesses state that they saw the deceased on the public road near the *daroja* of the house of the said Elahi Buksh, that the deceased hurried towards his house. The distance between the house of the deceased and the place where they saw him is about a mile. Hence it is inferred that the deceased was murdered within the said interval of time and that the murderers after murdering the deceased, cunningly threw his dead body into the tank in front of his house. The Head Constable, Kristo Chunder Bhadra, who first held the investigation, found the dead body near the *ghat* at the south-western corner of the said tank. Although I can make out the time of the murder, yet I am quite unable to ascertain the place where the murder took place. At a place on the road at the south-eastern corner of the bank of the tank, there were found marks left by the knees, &c., of some person. But I have not been able to make out whether the deceased was actually murdered at the said place or he was murdered at some other place and the dead body had been laid down at the said place before it was thrown into the water of the tank. (6) I have learnt from rumour that the complainant had, through the *mukhtar* Jashoda Rai, cousin of Mohesh Chunder Guho and living at the same house with him, filed a petition before the Magistrate of the district in dissatisfaction with my enquiry, the said Mohesh Chunder Guho being a *muhurir* employed in the Local Collectorate and a defendant in the case, sent up by me, regarding the theft of currency notes. Upon this, the District Superintendent under the orders of the said (Sahib) Magistrate, took down the evidence of several witnesses named by the complainant. I do not know the purport of the said petition or of the statement made by the said witnesses. (7) According to the verbal instructions of the District Superintendent, I send a true case report in Form C, and pray that the aforesaid District Superintendent will make a report of the particulars of the case that have come to light from the evidence of the aforesaid witnesses. Defendants who are suspected:— 1. Sadak Ali, 2. Aslam, } of Salla. 3. Imdadulla, 4. Anwar Ali, 5. Abdul Halim, } of Chur Uria. 6. Osman Ali, Chowkidar of the Mohulla. 7. Fazar Ali of Salla. 8. Abdul Halim, 9. Abdul Karim, 10. Yakub Ali, 11. Aminuddi } of Chur Uria. *Witnesses.* 1. Nymuddi Miji. 2. Arshad Mea. 3. Mosa Mea Moulvi. 4. Nur Mea. 5. Abdul Aziz. 6. Abdul Rohim. 7. Kalimuddi Bepari. 8. Ismail. 9. Abdul Rahaman. 10. Dula Mea. The evidence of these and several other persons, inhabitants of Chur Uria, Chur Salla, Salla, and of other villages has been taken. The houses of the said suspected eleven defendants have been searched, but no articles exciting suspicion has been found out. OSMAN ALI, Sub-Inspector. Exhibit Y3. A. PENNELL, Judge. The 17th January, 1901.

Exhibit Y2. A. PENNELL, S J., 17th January, 1901.

My remarks accompany.

The 28th September, 1900.

W. Y. REILY, D. S.

EXHIBIT Y4.

A. P. PENNELL,
Sessions Judge.

The 17th January, 1901.

MR. REILY'S REMARK ON THE POLICE REPORT, EXHIBITS Y4 TO Y8.

On the 28th August I visited the spot and tested the enquiry made by the Sub-Inspector to a certain extent. On the 6th September, the complainant having submitted a petition to the District Magistrate against the Police investigating officers in the terms quoted, I examined—

"That in spite of the evidence before the Police, the Police is silent up to date, that the Sub-Inspector Osman Ali being a local man, most of the accused persons are directly or indirectly related to the said investigating Sub-Inspector, and his sons, father-in-law, Amjad Mea, and that during the investigation the said Amjad Mea was all along with the Sub-Inspector, that the Inspector of Police sometimes went to the village at the time of the investigation but the purpose and effect of his going there was best known to him."

No less than 31 witnesses produced by the complainant besides some other persons, visited the spot again and prepared the necessary plan showing the place of occurrence, etc.

Three of the witnesses, viz., Hosan Ali, Torab Ali, and Islam, produced by the complainant were chance witnesses, by these witnesses the complainant attempts to prove the actual occurrence as eye-witnesses.

Three others, viz., Rajab Ali, Atar Ali, and Abdul Aziz. Atar Ali gave evidence proving connected facts.

Hasan Ali stated before me that while returning home from Bellew Saheb's *hat* accompanied by Torab Ali on a dark evening, Saturday night, he saw at about 8.30 p.m. by flashes of lightning, that the accused, Sadak Ali, Aslam and Anwar Ali caught hold of Ismail Jaigirdar (deceased) by the neck and waist, that they carried the deceased towards the tank in which his corpse was subsequently found; that he and Torab Ali spoke to the accused why they were beating Ismail Jaigirdar; that the assailants replied "you go away"; that they shouted when three persons came to the bank of the tank and witnessed the occurrence; that they (Hosan Ali and Torab Ali) did not give information to the relatives of the deceased whose house (*torn*) is 3 kanis from the place of occurrence; that they mentioned the occurrence to Atar Ali whom they met at the gateway of Har Chunder's house; that he, the witness, Hosan Ali, did not mention the occurrence to any other person on the night of occurrence or on the following morning; and that he was examined by Sub-Inspector Osman Ali to whom he made similar statements.

Exhibit Y5.
A. P. PENNELL,
Sessions Judge.
The 17th January 1901.

Torab Ali stated that in the month of Bhadra on a Saturday night, which was dark and rainy, while he and Hosan Ali were returning from Bellew Saheb's *hat*, they saw at about 4 *ghoris* of the night the accused* seize Ismail Jaigirdar and carry him towards the tank; that the accused, Sadak Ali, held deceased by the neck, Anwar Ali by the legs, and Islam by the waist; that they did not give intimation of the occurrence to the relatives of the deceased; that they met Atar Ali near Asaruddi's house on the public road; that Har Chunder's house is about four kanis from Asabuddi's house; that were (?) they met Atar Ali is about half a mile from Har Chundra's house; that they mentioned the occurrence to Atar Ali; that he (Torab Ali) also communicated the fact to his wife; and that he did not disclose these facts to any other person; that he was convicted in a *marpit* case sent up by Sub-Inspector Osman Ali; that he made similar statements before Sub-Inspector Osman Ali in presence of Nanda Bashi, Nanda Thakur, Hosein Ali and some others.

* Sadak Ali, Islam, Anwar Ali and 7 others.

Witness Islam stated that he saw accused Sadak Ali, Aslam, Yakub Ali, and Abdul Halim carrying a man towards the west bank of the tank near Ismail Jaigirdar's house, while returning from Korim Buksh's house; that the night was dark and rainy; that he saw the occurrence by the flashes of lightning; that accused, Sadak Ali, rushed at him, saying "be off"; that he told this to Abdul Aziz but to nobody else; that he was once convicted of "marpit," that he was examined by Sub-Inspector Osman Ali to whom he made similar statements.

Witness Rajjab Ali stated that on the 9th Bhadra just before sunset he saw Sadak Ali, Aslam, Abdul Hakim and Anwer Ali seated together under a *bat* tree; that he made similar statements before Sub-Inspector Osman Ali, and that he was once convicted for committing a riot, but he did not recollect the name of the Police Officer by whom he was sent up.

Exhibit Y6.
A. PENNELL,
Sessions Judge.
17th January 1901.

Witness Atar Ali stated that Torab Ali and Hosein Ali mentioned to him that Aslam, Sadak Ali, Abdul Hakim, Anwar Ali and others were beating Ismail Jaigirdar and that he (Atar Ali) did not mention this to anybody.

Witness Abdul Aziz corroborated the statement of witness Islam.

Shona Baun, wife of Torab Ali, stated that one night her husband told her that he saw four persons carrying a person.

The accused in their defence stated that Nanda Bashi, Nanda Thakur and Amir Khan demanded Rs. 200 from them; and on their refusal these persons were trying to concoct evidence against them, and prove the charge by some bad characters.

I disbelieve the evidence on the following grounds amongst some other grounds :—

First.—That Hosein Ali and Torab Ali when returning from Bellew Sahib's *hat* went to their houses by Binode Bepari's road, instead of going by Gura Mia's road or Arshad Jamadar's road, which is the more direct route. They could not assign any reason why they went a roundabout road.

Exhibit Y7.
A. P. PENNELL,
Sessions Judge.
The 17th January 1901.

Second.—The night was dark and that they alleged to have witnessed the occurrence by the flashes of lightning and recognize the accused is very improbable.

Third.—Most of the witnesses said that they did not mention the occurrence even to their relatives; this is curious.

Fourth.—That the witnesses state that they gave their evidence before the Sub-Inspector, that if this was true their having given evidence would be known to everybody, and this fact would have come to my ears and the Inspector's.

Fifth.—The complainant did not mention to me or the Inspector that these witnesses gave evidence before the Sub-Inspector which proved his case; but he submitted a petition before the Magistrate 13 days after the occurrence, accusing the investigating officer.

Sixth.—That Hosein Ali saw only three persons seize the deceased, while Torap Ali, his companion, said that the assailants numbered ten. Another curious fact is that they could distinguish by flashes of lightning how the deceased was carried.

Exhibit Y8.
A. PENNELL,
Sessions Judge.
The 17th January 1901.

Seventh.—It has been proved that the deceased's wife was carrying on an intrigue with Sadak Ali, and this Sadak Ali in combination with Nanda Bashi and Nanda Thakur were conducting the case on behalf of the complainant.* Some of the villagers also suspect Sadak Ali to have committed the deed. Even the complainant's Mukhtar Jashoda Kumar Rai admitted the above fact.*

W. Y. REILY,
D. S.

The 28th September.

EXHIBIT X1.

A. PENNELL,
Sessions Judge.

The 30th January 1901.

MR. PENNELL'S LETTER, DATED THE 2ND DECEMBER 1900, TO MR. BOURDILLO.

NOAKHALI,
The 2nd December 1900

DEAR MR. BOURDILLON,

I write to ask if there would be any objection to my taking casual leave for say three days to go to Calcutta to meet my sister, who is due to arrive there on the 11th instant. My sister has never been in India before and the journey here is not an easy one. I should esteem it a favour therefore if I could be given this leave.

The work in my Court I may say is well up to date. There are no sessions cases pending and as far as I can see my absence will cause no appreciable inconvenience to anyone.

Yours sincerely,
A. P.

Hon. J. A. B.

EXHIBIT X2.

A. PENNELL,
Sessions Judge.

The 30th January, 1901.

MR. BOURDILLON'S LETTER, DATED THE 5TH DECEMBER, 1900, TO MR. PENNELL.

Government of Bengal.

Calcutta,
The 5th December, 1900.

DEAR MR. PENNELL,

There is no objection to your having three days' casual leave to Calcutta to meet your sister.

Yours truly,
J. A. BOURDILLON.

EXHIBIT X4.

A. PENNELL,
Sessions Judge.

The 30th January, 1901.

MR PENNELL'S LETTER, DATED THE 12TH DECEMBER, 1900, TO MR. BOURDILLON.

United Service Club,
Calcutta,
The 12th December, 1900.

DEAR MR. BOURDILLON,

I find on arriving at Calcutta that my sister's steamer, the "Parramatta," instead of arriving yesterday, as advertised, will not be in till to-morrow morning. Under these circumstances I am constrained to ask you for casual leave till the end of this week. I might with a rush get to Noakhali in time for work on Saturday, but think myself that it is not worth while trying to do so.

Yours sincerely,
A. PENNELL,
Sessions Judge.

Hon. J. A. Bourdillon.

(On the back.)

MY DEAR PENNELL,

Certainly. Stay as you propose.

Yours sincerely,
J. A. BOURDILLON.

The 12th December.

EXHIBIT X6.

A. P. PENNELL,
Sessions Judge.

The 30th January, 1901.

MR. CHAPMAN'S LETTER, DATED THE 25TH DECEMBER, 1900, TO MR. PENNELL.

High Court, Appellate Side,
Calcutta.

4, Middleton Street,
Calcutta,
The 25th December, 1900.

DEAR PENNELL,

The Judges are informed that you obtained leave from the Chief Secretary to come to Calcutta for the 12th December last. You were to have returned to your station on the 15th, and the Chief Secretary understood that you did so. The Judges desire to know when you left Calcutta, and upon what date you returned here, and also from whom you obtained leave to quit your station again, or to remain in Calcutta, if you did so. I am to ask you for an early reply.

Yours sincerely,
E. P. CHAPMAN.

EXHIBIT X8A.

A. PENNELL,
Sessions Judge.

The 30th January, 1901.

MR. PENNELL'S LETTER, DATED THE 26TH DECEMBER, 1900, TO MR. CHAPMAN, EXHIBITS 8A TO 8C.

Hotel Continental,
The 26th December, 1900.

MY DEAR CHAPMAN,

I am in receipt of your demi-official of yesterday's date. I obtained three days' casual leave from the Chief Secretary to meet my sister, who was due to arrive in Calcutta on the 11th instant. As her steamer was late, I was obliged to apply for casual leave for the rest of the week, which was granted. I left Calcutta on the 15th instant (a day earlier than I need have done) for Noakhali. I returned to Calcutta on the night of the 23rd instant. I did not obtain leave from anyone to do so, as I did not consider it necessary. I have hitherto been under the impression that except for the pujas it is not necessary for a Judge to obtain leave to absent himself from his station during authorised holidays, and, this impression was confirmed by the result of some correspondence which I had with you in July, 1899, and to which I would solicit a reference. I may add that I came to Calcutta similarly for the Christmas holidays in 1898 and 1899, but no questions were ever asked about it, and it is my belief that a great many other Judges are at present in Calcutta without any other authorisation than exists in my case.

As the Courts are closed I could do no work even if I were at Noakhali, but I may say that even apart from that the state of my file is not such as to necessitate my remaining at Noakhali. I would solicit a reference to the return for the September quarter, which will show that the work is well up to date. I may also add that with one trifling exception not a single order of mine has been reversed or modified by the High Court during the whole time I have been at Noakhali. I would submit that neither the quantity nor the quality of my work has been such as to call for any specially rigorous treatment on the part of the Court. And I would point out that it would be particularly hard if I were denied the indulgence (if it be an indulgence) of coming to Calcutta this Christmas as I have my sister with me and would like her to see the gaieties which go on here at this season. It is true that I have recently had casual leave, but it was for a domestic reason, and it is the first time in more than 14 years' service that I have ever asked for leave for such a reason. It may perhaps be the belief of the Judges that I remained on in Calcutta after the 15th. I have already stated that this is not so. If such an erroneous impression led to your letter, the Judges will not perhaps be offended at the request which I now make. It is my intention to apply to the Chief Secretary for casual leave for the 2nd January, to enable me to attend Mr. S. C. Mukerji's wedding which is fixed for the 1st instant, and I should be obliged if the Honourable Judges will intimate that they have no objection to my having it.

Exhibit X8.
A. PENNELL.
The 30th January 1901.

Yours sincerely,
A. P. PENNELL,
Sessions Judge.

P.S.—I enclose copies of the correspondence between myself and the Chief Secretary with reference to my casual leave.

(1)

Noakhali,
The 2nd December, 1900.

DEAR MR. BOURDILLON,

I write to ask if there would be any objection to my taking casual leave for say three days to go to Calcutta to meet my sister who is due to arrive there on the 11th instant. My sister has never been in India before and the journey here is not an easy one. I should esteem it a favour there if I could be given this leave. The work in my Court I may say is well up to date. There are no Sessions cases pending, and as far as I can see my absence will cause no appreciable inconvenience to anyone.

Yours sincerely,
A. P. PENNELL,
Sessions Judge.

Hon. J. A. Bourdillon.

EXHIBIT X8*c*.

A. PENNELL,
Judge.

The 30th January 1901.

(2)

CALCUTTA,
The 5th December, 1900.

DEAR MR. PENNELL,

There is no objection to your having three days casual leave to Calcutta to meet your sister.

Yours truly,
J. A. BOURDILLON.

UNITED SERVICE CLUB,
The 12th December 1900.

DEAR MR. BOURDILLON,

I find on arriving at Calcutta that my sister's steamer, the "Parramatta," instead of arriving yesterday as advertised will not be in till to-morrow morning. Under these circumstances I am constrained to ask you for casual leave till the end of this week. I might with a rush get to Noakhali in time for work on Saturday, but think myself that it is not worth while trying to do so.

Yours sincerely,
A. PENNELL.

Hon. J. A. Bourdillon.

MY DEAR MR. PENNELL,

Certainly. Stay as you propose.

Yours sincerely,
J. A. BOURDILLON.

The 12th December.

EXHIBIT X9.

TELEGRAM, DATED 29TH DECEMBER, 1900, FROM MR. CHAPMAN TO MR. PENNELL.

Class P. INDIAN TELEGRAPH. Monthly Local No.

To Station Birbhum. | From Station Calcutta.

Words.	Day.	Hour.	Minute.	Official instruction.
14	29	12	30	

To (Person) A. P. PENNELL. | From (Person) CHAPMAN.

1			
2			
3	Rampini	has	given
4			
5	me	no	orders
6			
7			
8		Exhibit X 9	
9			A. P. PENNELL.
10		*The 31st January, 1901.*	
11			
12			
13			
14			

Received from L. N. | Sent to L. N.

At Hrs. Mts. By | At Hrs. Mts. By

Birbhum
(Illegible)
December, 1900.

Date *Post Master.*

EXHIBIT X10.

A. PENNELL,
Judge.

The 30th January, 1901.

(C)

COPY OF TELEGRAM, DATED 29TH DECEMBER, 1900, FROM MR. PENNELL TO THE HIGH COURT.

To Calcutta,
To High Court,
From Birbhum,
From A. Pennell.

Solicit that orders on my demi-official may be sent to Hotel Continental to wait my arrival to-morrow.

A. PENNELL.

(Despatched on 29th December.)

EXHIBIT X11.

LETTER, DATED 31ST DECEMBER, 1900, FROM MR. PENNELL TO MR. BUCKLAND.

Exhibit X 14.
A. PENNELL,
The 31st January, 1901.

Hotel Continental,
The 31st December, 1900.

MY DEAR BUCKLAND,

I write to ask if I may have casual leave for the 2nd January. I want to attend the wedding of Mr. S. C. Mukerji, whom I have known from a boy, on the 1st January, and as there is only one mail to Chandpur, which leaves very early in the morning, I cannot do this without exceeding the authorized holidays.

Yours sincerely,
A. PENNELL.

Hon. C. E. Buckland, C.I.E.

EXHIBIT X12.

LETTER, DATED 31ST DECEMBER, 1900, FROM MR. BUCKLAND TO MR. PENNELL.

Exhibit X 12.
A. PENNELL.
The 30th January, 1901.

Calcutta,
The 31st December, 1900.

MY DEAR PENNELL,

Your letter of to-day just received asking for casual leave for the 2nd January.

Please let me know why you have not applied before. To be back for your work on the 2nd, I suppose you would have to start by the very early train on 1st, and at present I do not understand why you should have put off till the after (*noon*) of the 31st December to ask for casual leave for the 2nd January. Have you only just received an invitation, or did you not intend until this afternoon to ask for it?

Also, please let me know if you start from here on the early morning of 2nd, at what time ought you to reach Noakhali? Shall you be in time to hold Court on the 3rd, and for how long?.

Yours sincerely,
C. E. BUCKLAND.

EXHIBIT X14.

LETTER, DATED 31ST DECEMBER, 1900, FROM MR. PENNELL TO MR. BUCKLAND.

Exhibit X 11.
A. PENNELL.
The 31st January, 1901.

Hotel Continental,
The 31st December, 1900.

MY DEAR BUCKLAND,

The enclosed correspondence which has passed between myself and the High Court will show how it is I have not applied for casual leave for the 2nd January before. The expression "the Judges" denote Mr. Justice Rampini only; Mr. Justice Ghose, who is a Member of the English Committee, expressed to me great surprise at Mr. Rampini's action. Mr. Rampini has not replied either to my letter or telegram. I cannot compel him to reply. He has against me a private grudge of long standing in connection with a syndicate into which he entered for promoting a tea company.

2. I have all along intended to apply for the casual leave. I received invitation, both informal and formal, long ago. I am an intimate friend of the bridegroom and his uncle, Mr. P. L. Roy, and have known the bride's people for years.

3. If I start from here on the early morning (5.47 a.m.) of the 2nd I reach Feni at 1.58 a.m. on the 3rd; and starting from there at dawn reach Noakhali at, say, 10.30 a.m. on the 3rd, in time to hold Court on that day for as long as most Judicial Officers sit. I am sorry to have given you so much trouble in the matter, but you will see it is not my fault.

Yours sincerely,
A. PENNELL.

Hon. C. E. Buckland, C.I.E.

EXHIBIT X15.

LETTER, DATED 1ST JANUARY, 1901, FROM MR. BUCKLAND TO MR. PENNELL.

Exhibit X 15.
A. PENNELL.
The 30th January, 1901.

Calcutta,
The 1st January, 1901.

MY DEAR PENNELL,

In reply to your two letters of yesterday, you may have casual leave for the 2nd, *i.e.*, you may remain in Calcutta for Mukerji's wedding on the 1st, and I must ask you to leave Calcutta by the early morning train of the 2nd so as to be back at Noakhali for Court on the 3rd.

Yours,
C. E. BUCKLAND.

I return your letters.

EXHIBIT X17.

LETTER, DATED 3RD JANUARY, 1901, FROM MR. PENNELL TO MR. BUCKLAND.

Exhibit X 17.
A. PENNELL.
The 30th January, 1901.

Noakhali,
The 3rd January, 1901.

MY DEAR BUCKLAND,

In order to save you the trouble of having to communicate with me again upon the subject, I write to say that I reached Noakhali at 10.40 a.m. Calcutta time, and that I am now (12 noon Calcutta time = 11.27 R. T. time) in Court. As it so happened, I walked to Court with the Collector, so that we both attended office almost simultaneously,

I may, perhaps, be permitted to add that the mail steamer of the 1st grounded, and that in consequence the passengers for places beyond Chandpur had to proceed by the same train as myself. Even, therefore, if I had not been allowed casual leave for the 2nd instant, I could not have got to Noakhali any sooner. I have received no reply to my letter or telegram to High Court.

Again apologising for giving you so much trouble,

I am,
Yours sincerely,
A. PENNELL.

Hon. C. E. Buckland, C.I.E.

EXHIBIT X18.

A. PENNELL,
Judge.

The 30th January, 1901.

LETTER, DATED 26TH JANUARY, 1901, FROM MR. BUCKLAND TO MR. PENNELL.

U. S. Club,
The 26th January, 1901.

MY DEAR PENNELL,

I ought have written to you before about a passage in a letter of yours, dated the 31st December, to me, but it escaped my notice (after I gave you the leave you wanted), and has only just now turned up again.

You wrote, "Mr. Rampini has not replied either to my letter or telegram. I cannot compel him to reply. He has against me a private grudge of long standing in connection with a syndicate into which he entered for promoting a tea company."

This is an imputation of motive which ought not to be made against anyone, and certainly not against a Judge of the High Court, as a reason for his dealing with an official matter in a particular way. Before taking any action on the subject, I think it right to give you an opportunity of withdrawing this passage, if you desire to do so. If you prefer to let it stand it will be my duty to bring it to Mr. Rampini's notice.

Please at the same time forward to me a copy of the letter and telegram referred to in this passage of your letter dated 31st December.

C. E. BUCKLAND.

EXHIBIT X20.

A. PENNELL,
Judge.

The 30th January, 1901.

COPY OF TELEGRAM, DATED 19TH JANUARY, 1901, FROM SESSIONS JUDGE, NOAKHALI, TO THE CHIEF SECRETARY.

To

Chief Secretary, Calcutta,

From

Sessions Judge, Noakhali.

Please wire whether your demi-official of 26th was written by order of Government.

A. PENNELL.

The 29th January.

EXHIBIT X21.

A. PENNELL.

The 31st January, 1901.

LETTER NO. 332, DATED 30TH APRIL, 1900, FROM THE UNDER SECRETARY, GOVERNMENT OF BENGAL, TO MR. PENNELL.

No. 332 J. D.

JUDICIAL DEPARTMENT.

Judicial Branch.

From

C. L. S. RUSSELL, ESQ.,
Under Secretary to the Government of Bengal,

To

A. P. PENNELL, ESQ.,
District and Sessions Judge, Noakhali.

Dated Darjeeling, the 28th April, 1900.

SIR,

I am directed to forward, for your information, the accompanying copy of a Resolution by the Government of India in the Home Department, No. 1003-1014, dated the 18th April, 1900, regarding the case of Narsingh Singh, of Chupra.

I have the honour to be,
Sir,
Your most obedient Servant,
C. L. S. RUSSELL,
Under Secretary to the Government of Bengal.

EXHIBIT X22.

A. PENNELL,
Sessions Judge.

The 4th February, 1901.

LETTER, DATED 31ST JANUARY, 1901, FROM MR. CARGILL TO MR. PENNELL.

Noakhali,
The 31st January, 1901.

MY DEAR PENNELL,

I should like to know, if you have no objection to telling me, whether, when I left the station on 9th current, you remarked that I always left the station when outsiders come here, or words to that effect, because I did not care to entertain them.

My wife tells me she heard this, and shows me some correspondence she had with your sister on the matter.

Yours sincerely,

J. D. CARGILL.

EXHIBIT X23.

A. PENNELL,
Sessions Judge.

The 4th February, 1901.

LETTER, DATED 31ST JANUARY, 1901, FROM MR. PENNELL TO MR. CARGILL.

Noakhali,
The 31st January, 1901.

MY DEAR CARGILL,

I have no objection (beyond that it takes up my time, and that I am very busy) to telling you that so far as I remember I did not on the occasion in question give expression to the opinion indicated by you. I wrote to Ezechiel sometime before then, asking him to stay with me, and said in the letter that you were, I heard, going out before Bignell arrived, and were not expected to return till after he (Ezechiel) had gone. This may, possibly, have something to do with what you have heard. I did not, however, express any opinion as to the reason of your absence. Ezechiel can show you the letter. It will not impossibly have to be filed in Court.

Please try and avoid all correspondence with me just now. It will be better for both of us.

Yours sincerely,

A. PENNELL.

EXHIBIT X24.

A. PENNELL,
Sessions Judge.

The 12th February, 1901.

LETTER, DATED 12TH FEBRUARY, 1901, FROM MR. CARGILL TO MR. PENNELL.

MY DEAR PENNELL,

Your grass-cuts have cut grass in the circuit house compound and refused to discontinue the practice, though my servants have spoken to them. When I sent for them they refused to come. I have, therefore, no alternative but to write to you.

To make matters worse they have cut, or rather dug, grass on the cricket and football ground, where I am particular about the grass remaining in good condition.

I would be obliged if you would order them to desist from this, or either to returf the part of the ground they have spoilt, or to send me the money to have it returfed.

Yours sincerely,

J. D. CARGILL.

P.S.—You will see I am obliged to write to you, though on the last occasion I did so, you asked me to desist. The grass, I may add, is not my property. It belongs to Government.

J. D. C.

EXHIBIT X26.

A. PENNELL,
Sessions Judge.

The 12th February, 1901.

LETTER, DATED 1ST JANUARY, 1901, FROM MR. BUCKLAND TO MR. PENNELL.

U. S. CLUB,
The 1st January, 1901.

MY DEAR PENNELL,

Yours of 29th December from Suri.

Arrangements will be made so that you can have your three months' privilege leave in or about the early part of May, as you ask.

Yours,
C. E. BUCKLAND.

EXHIBIT X27.

A. P. Pennell,
Sessions Judge.

The 12th February, 1901.

LETTER, DATED 3RD DECEMBER, 1900, FROM MR. BOURDILLON TO MR. PENNELL.

DARJEELING,
The 3rd December, 1900.

DEAR MR. PENNELL,

In continuation of my letter of the 29th August, I write to say that the Lieutenant-Governor this morning had before him the proposals for posting Judges in the cold weather.

I am to say that after giving the matter his careful consideration His Honour is unable to transfer you at present, but there will be several changes before the hot weather, and you may count upon being transferred then to a healthy district, probably Bankura.

Yours truly,
J. A. BOURDILLON.

EXHIBIT X28.

A. PENNELL, J.

The 12th February, 1901.

LETTER, DATED 12TH JUNE, 1900, FROM MAJOR STRACHEY TO MR. PENNELL.

DARJEELING,
The 12th June, 1900.

DEAR MR. PENNELL,

The Lieutenant-Governor desires me to acknowledge your letter of the 21st ultimo, and to express his regret that by an oversight it has not been answered earlier.

He is pleased to see that you now recognize that your judicial deliverances have been often wanting in dignity and impartiality. Essentially, as you put it yourself, in charity, and he sincerely hopes that, as you say, the High Court will not again have occasion to comment adversely upon them.

Your appointment to Noakhali was arranged, as the Lieutenant-Governor told you, in December, long before he heard of the Chupra case. The arrears in Saran and Champaran had become so serious as to lead to correspondence with the High Court, and to necessitate your appointment to a lighter charge. The Collector of Noakhali has asked permission to return to the district on the expiry of his leave, and the Lieutenant-Governor cannot admit that the district is in any sense an undesirable one. One of your predecessors, Mr. Gun, remained there for many years at his own request. It would not be convenient to make any change at present, but the Lieutenant-Governor will bear your wishes in mind in the arrangement for next cold weather.

I am,
Yours faithfully,
J. STRACHEY.

EXHIBIT X29.

A. PENNELL, J.

The 13th February, 1901.

ENDORSEMENT OF MR. TWIDELL, DATED 8TH OCTOBER, 1899.

(In Pencil.)

Go to the Sessions Judge and see if you can be allowed to take a copy, as I want a copy before 3 p.m. to-day.

J. W. T.,

The 8th October, 1899.

SIR,

I went to the Judge's Court and met a clerk there, asked him for a copy of the judgment delivered by the Sessions Judge in appeal case of Nursingh Singh; he said that he was copying the judgment yesterday when the Judge took it again with the record, and that if it is sent to office to-day the copy will be sent here to-morrow.

Your most obedient servant,

BACHU LAL,

The 8th October, 1899.

EXHIBIT X30.

A. PENNELL,

Judge.

The 13th February, 1901.

LETTER, DATED THE 8TH OCTOBER, 1899, FROM MR. TWIDELL TO MR. PENNELL.

The 8th October, 1899.

DEAR SIR,

I have sent to your office and also to you for a copy of your judgment in the case of Narsingh Singh, which I want, if possible, before this afternoon. Would you please allow my *mohurir* to take a copy? I understand that judgment was given yesterday, and I should be glad to know what difficulty there is in the way of my having a copy.

Yours faithfully,

J. TWIDELL.

EXHIBIT X31.

A. PENNELL,

Judge.

The 13th February, 1901.

LETTER, DATED THE 20TH OCTOBER, 1899, FROM MR. FISHER TO MR. PENNELL.

Naya Dumka,

Sonthal Purganas,

The 20th October, 1899.

MY DEAR PENNELL,

I expect to be relieved by Carstairs on the 25th instant, and Bolton has written to me to proceed to Chapra as soon as possible. Shall I find you at Chapra about the 27th October, and would it be convenient to you if I were to take over charge on the morning of the 28th October.

C. FISHER.

EXHIBIT X32.

A. PENNELL,
Judge.

The 13th February, 1901.

LETTER, DATED THE 28TH OCTOBER, 1899, MR. BOLTON TO MR. PENNELL.

Darjeeling,
October 28th.

MY DEAR PENNELL,

I have sent you a telegram requesting you to join early at Noakhali on being relieved. I understand that Fisher reaches Chapra to-day.

Huda is to take charge of Faridpur at the end of the vacation, Mitter having been granted one month's leave. I have authorised him, pending your arrival, to place the Munsiff in charge. This arrangement should obviously not continue for more than a few days, and it is for that reason that you are requested to proceed early to Noakhali.

Yours sincerely,
C. W. BOLTON,
9, Elysium Row.

EXHIBIT X33.

A. PENNELL,
Judge.

The 13th February, 1901.

(In Pencil.)

NOTES OF CONVERSATION WITH THE LIEUTENANT-GOVERNOR ON THE 10TH DECEMBER, 1899.

I had not read your judgment when I passed the order for your transfer.

The vindictive rancour with which you pursued the policeman and the district officer.

My Government.

You had better be careful what you are saying.

Reading your judgment, I have grave doubts whether you are fit for judicial employment.

I am speaking for your benefit and for your guidance.

I am not going to enter into a discussion with the High Court. It is my business to say where my officers can be most usefully employed. The judicial officers are my officers and not those of the High Court. Reading your judgment leads me to doubt whether you were really so impartial as you should have been.

I have not seen the policeman or the district officer, and have received no communication from them. I can only say that, reading your judgment as a perfectly impartial man, I have doubts as to your impartiality.

I am speaking to you privately.

EXHIBIT X34.

A. PENNELL,
Judge.

The 14th February, 1901.

COPY OF STATEMENT OF CASE BY DR. ASHE, BENGAL CIVIL MEDICAL DEPARTMENT.

Form No. 37.

Statement of the case under Articles 487 (*a*) and 894 (*a*) and 903, Civil Service Regulations.

Statement of the case of—

Name.—A. P. Pennell.

Office.—District and Sessions Judge, age 33.

Service in India.—Ten years (active).

Previous sick leave.—Nil.

Habits.—Active.

Present disease, its symptoms, causes and duration, with details of its progress and treatment.

Present condition.

Has suffered from dyspepsia since 1889; first came under my treatment in October, 1897; on my advice had a new set of teeth put in in December and for a couple of months kept better. Since I have treated him he has had eight distinct attacks of acute gastritis, with vomitting, purging, intense headache, and prostration lasting from 24 to 48 hours. The last attack was on the 25th of August, 1898. He has been treated with pepsine, bismuth, creasote, bromides, sulphocarbolate of soda and tonics with regulation of food, drink. As the attacks are recurring at frequent intervals, I have advised a sea trip to Australia and back.

REGINALD S. ASHE, M.B.,
Offg. Civil Medical Officer,
Mymensingh.

EXHIBIT X35.

A. PENNELL,
Judge.

The 14th February 1901.

MEDICAL CERTIFICATE FROM DR. SWAINE.

I hereby certify that Mr. A. Pennell, Additional Sessions Judge of Saran was, when on sessions duty at Motihari, under my treatment from the 12th to the 16th April 1899, suffering from severe headache, constant vomitting and fever, and was quite incapacitated from going to Court and doing any duty. Though far from well he attended Court on the 15th April against my advice.

F. R. SWAINE, M.B.,
Lieutenant-Colonel, I.M.S., Civil Surgeon, Champaran.

Motihari,
The 5th August 1899.

EXHIBIT 13B.

A. PENNELL,
Judge.

The 14th August, 1899.

EXHIBIT 36.

A. PENNELL,
Judge.

The 14th February 1899.

LETTER NO. 453, DATED THE 4TH AUGUST, 1899, FROM DR. MADDOX.

EXHIBIT 22.

No. 453.

From Captain R. H. Maddox, I.M.S., Civil Surgeon, Saran, to A. P. Pennell, Esq., I.C.S., District Judge, Saran, Chupra, Dated 4th August, 1899.

SIR,

In reply to your letter No. 991, dated 2nd August 1899, I have the honour to state that I visited you twice on 31st May, once on 1st June and once on 2nd June. You were then

suffering from an attack of acute gastric cattarh with vomitting and diarrhœa. You were certainly not fit to go to Court on 1st June, and were not really fit for work for several days after that date, and I consider you were quite justified in leaving the Court earlier than usual.

2. I remember seeing you after your return from Motihari in May (at the time when Mr. Caspersz was on leave in Darjiling). I certainly thought you were looking very ill, and to the best of my recollection I told you so at the Club the first morning I saw you after your return; at any rate I mentioned it incidentally to Mr. Caspersz in a private letter which I wrote to him (?) Darjiling of which being a private letter I kept no copy.

I have the honour to be, Sir,
Your most obedient Servant,
R. H. MADDOX,
Captain, I.M.S., Civil Surgeon, Saran.

EXHIBIT X37.

A. PENNELL,
Judge.

The 14th February 1901.

LETTER, DATED THE 5TH OCTOBER 1900, FROM MR. BOURDILLON TO MR. PENNELL.

Darjeeling,
The 5th October 1900.

MY DEAR PENNELL,

I have to-day seen the Lieutenant-Governor, and he has told me of what passed at his interview with you.

He has definitely decided to give you no assistance in effecting an exchange to another province.

In these circumstances you will, I suppose, apply for leave in due course.

Yours truly,
J. A. BOURDILLON.

EXHIBIT X38.

A. PENNELL.

The 15th February, 1901.

LETTER, DATED THE 5TH SEPTEMBER 1898 FROM MR. PENNELL TO MR. BOLTON.

The 5th September 1898.

MY DEAR MR. B.,

I understand that it is in contemplation, if I do not take furlough, to post me to Saran for two or three months at the end of the privilege leave just granted to me. Under these circumstances I should be glad if you would permit me to withdraw my application for furlough. I trust that at the end of my term in Saran you will be able to let me have some district with a good climate or at all events one where dyspepsia is not prevalent.

Yours sincerely,
A. PENNELL.

P. S.—I find I took away the statement of my case, which I think you want. I enclose it herewith.

A. PENNELL.

(ANNEX No. 42 TO No. 1.)

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

The 17th April 1901.

RIMINAL JURISDICTION.

Present:

THE HONOURABLE MR. JUSTICE AMEER ALI,
and
THE HONOURABLE MR. JUSTICE PRATT,
Two of the Judges of the Court.

Aslam, Anwar Ali and Sadak Ali ... ... *Appellants*,

versus

The Emperor ... ... *Respondent.*

This is one of those murder cases unhappily so common in Eastern Bengal, several instances of which have recently come before us.

The case is simple enough, but its consideration has been rendered difficult by the mass of extra-judicial matter imported into it by the Sessions Judge and the lengthy dissertations in which he has indulged on side issues of a more or less irrelevant character.

The consequence is that his judgment has assumed the formidable dimensions of 80 folio pages of printed matter.

The scene of the occurrence which gave rise to the present prosecution, is a village called Chur Uria, in the District of Noakhali, situated about three or four miles to the south-west of the sudder station or town of Noakhali, known also as Sudharam. The name of the murdered man, for there can be no doubt that he came by his end by foul means, is Ismail Jagirdar. He seems to have been a man of substance. Besides owning some property he was employed as a peon under the Bhulua Estate. As such peon his duties were to serve processes and proclamations against defaulting tenants. Round about his house were scattered the *baris* of his own tenants, between whom and the deceased there seem to have been constant dispute and litigation. It will thus be seen that Ismail Jagirdar was by no means a popular person in the neighbourhood. He is said to have been of a litigious and grasping disposition and was probably hated by many people.

According to Idris, Ismail's son, a youth of 17 or 18, and judging from the record, possessed of considerable shrewdness and intelligence, the deceased left home for Noakhali on Saturday morning (9th Bhadro=25th August), but did not return in the evening as he was accustomed to do. Next morning Idris saw his father's corpse in the tank close to his *bari*.

Idris says that on seeing his father's dead body he burst out crying. He was then joined by a number of men, among them one Yakub Ali who was sent up for trial, but was acquitted in the Sessions Court. On his way to the thana these men suggested to him, he says, to report his father's death, but to charge no one; they also suggested his going to a *mukhtear*, and he was in fact taken to a *mukhtear* called Ashruff Ali who told him to lodge the information as he had seen. From the *mukhtear's* lodgings he went to the thana and gave the *izhar* which was taken down by the Sub-Inspector; when the body was taken out and sent to the Doctor, he accompanied it, and on learning that death was due to violence he lodged a second information late at night. He states that when he gave the information the Daroga told him to name a few of the persons with whom his father had enmity. This is of some significance, as it shows that at that time the Sub-Inspector, who, the Sessions Judge thinks, was bent on hushing up the case, was not actuated by any such motive and was evidently, from Idris' statement, anxious to get the names of the people who would have a motive for committing the crime. In his second information, Idris appears to have included every neighbour with whom his father had any dispute or any possible cause of enmity.

The Police came to the spot on Monday morning. The investigation lasted several days, but the Sub-Inspector either could not find a decisive clue to the culprits, or, as the prosecution allege, would not arrest the persons whom Idris suspected, because he was improperly influenced on their behalf. Anyhow Idris was not satisified with the police investigation, and on the 5th of September he presented a petition to the Magistrate complaining against the Sub-Inspector. This petition is marked as Exhibit III in the Sessions Court. Idris suggests in his evidence that Osman Ali Daroga was influenced by two men, Amjad and Hamid, on behalf of the accused. Osman Ali's special diary respecting

the investigation has been made a part of the record, and the learned Sessions Judge appears to have made use of it in the course of his judgment, but when the pleader for the accused attempted to refer to it he was stopped by the Judge, who evidently acted thus under the impression that although it might be used for the purpose of showing the laches of the Sub-Inspector, it was not relevant on behalf of the accused. In fairness to the persons, who are on their trial for their lives, we have thought fit to refer to those diaries. Upon the evidence there can be no doubt (although the Session Judge seems not quite to believe it), that Mr. Reily visited the locality under the orders of the District Magistrate on the 15th September and had a plan or map made under his supervision by the Court Head Constable Mohim Chunder. That map is marked as Exhibit A. In the course of Mr. Reily's examination it appeared that A was prepared from a draft, which also has been put in and is marked as Exhibit A a. The map prepared by Mohim under Mr. Reily's supervision does not show the breaks on one of the roads leading from the north to the south, and in consequence of that another map was ordered to be prepared by the District Overseer, which also has been put in and marked as Exhibit V. The omission to show the breaks on the plan A. prepared by Mohim is attributed by the Sessions Judge to an improper motive on the part of Mr. Reily, *viz.*, a desire to suppress evidence. And not only that; thinking that A could not have been prepared on the 15th of September and as Mr. Reily's signature was attached to it as of that date, he charges him with the fabrication of false evidence. With this latter suggestion we shall have to deal in another proceeding, and we, therefore, refrain for the present from expressing any opinion on that point.

But in order to judge whether the imputation of perjury so lavishly made in the learned Sessions Judge's judgment has any substance or foundation, we have carefully examined Mr. Reily's evidence, and are bound to say, in common fairness to him, that we have seen no indication of any intentional perversion of fact or mis-statement of truth or suppression of evidence. Mr. Reily, in the course of a long and searching examination by the Court, may not have remembered facts he might or even ought to have remembered. He may have made mistakes regarding matters which came within his cognizance which might show that he is not an intelligent officer, but to hold that he has wilfully perjured himself, is, in our deliberate opinion, a violent and groundless assumption. We are constrained to agree with the learned pleader for the appellants that the judicial vision of the learned Sessions Judge was clouded by extraneous circumstances.

Even Exhibit V prepared by the Sub-Overseer is imperfect. It represents the *locale* only partially and does not give all the houses along the road; nor does it depict the roads leading from the town of Noakhali to the village of Chur Uria. In spite of the allegation of perjury and forgery against Mr. Reily there is nothing to show that the delineation of the place, apart from the condition of Asak Jamadar's road, is incorrect; and we therefore proceed to deal with this case upon the basis of the draft map prepared by Mohim Chunder.

It will be noticed from this map that the house of the deceased has a tank directly to the east of it; to the south of the tank is a path-way leading from the public road called Benode Bepari's road to the *daroja* of the deceased's *cutchery* hut. The Sessions Judge says the word "*daroja*" in the district of Noakhali means the raised pathway which leads up to the entrance of the *cutcheri* hut, or to the *oothan* (court-yard) where there is no *cutcheri* house. On the map, D is said to represent the *daroja*, B is the *cutcheri*, and A the dwelling-house of the deceased. On the west of the deceased's house is the house of Abdul Hakim, one of the persons who was suspected and accused by Idris. To the south-west lies the house of Naimuddi Miaji. To the north-west is the house of Karim Buksh with whom lives Abdul Hakim, another person accused in the case. To the north of the tank is the house of Imdadulla, who also was suspected and accused, but is not concerned with this trial. Immediately to the south of the pathway to the south of the tank is the house of Sadak and Aslam, two of the appellants before us. The third appellant lives futher south. Along Benode Bepari's road from the path-way mentioned above, there are a number of houses to the very end of the road shown in the map. Another important circumstance which is clear from the map seems to have escaped the notice of the learned Sessions Judge, *viz.*, the path or village road running from west to east, to the north of the tank and the garden belonging to the deceased and meeting Binode Bepari's road towards the east just south of Imdadulla's house.

The petition of the 5th of September is a carefully worded document drawn up evidently by one experienced in law, in which the petitioner is made to say that the petitioner and his mother suspect their enemies named by them before the Police, and that during the Police investigation it was disclosed by some persons that the said suspected enemies actually caused the death of his father, and that in spite of the evidence before the police they were silent up to date. He then proceeds to state as follows:—"That the Sub-Inspector Osman Ali being a local man, most of the accused persons are directly or indirectly related to the said investigating Sub-Inspector and his son's father-in-law Amjad Mia, and that during the investigation the said Amjad was all along with the Sub-Inspector," and that in consideration of all these facts the petitioner was inclined to believe that no proper care will be taken by the police to bring the culprits to justice, and therefore he prayed that the Magistrate should take up the case himself. Idris admits that on that day he knew the men who had deposed before the police, but he did not mention their names in the petition. His abstention to mention the names was naturally commented upon by the defence. But the learned Sessions Judge has overruled that objection on the ground that Idris and his advisers were naturally reticent, as they did not wish to disclose the

names of the witnesses unless they felt sure that the case would be taken up by the Magistrate himself. We are not exactly able to follow the argument, for if these persons, as the complainant alleges, and the witnesses also allege, had already made statements to the police officer incriminating the accused, a concealment of their names could be of no assistance to the complainant; but this is a small matter, and so we shall go on with the recital of the facts.

Upon the petition of the 5th of September, Mr. Reily was directed to investigate the matter himself, and he examined, in the police office, after service of notice through the thana, a number of witnesses, some of whom have given evidence in the case. The learned Sessions Judge comments on the conduct of Mr. Reily in having summoned those witnesses through the Sub-Inspector, against whose impartiality the complainant had made certain imputations. That again seems to us to be somewhat irrelevant to the inquiry. The case for the prosecution is not that by this procedure any material witness was kept back or that any tampering had taken place in consequence of Mr. Reily sending for the witnesses in the regular course instead of making a house to house visitation in order to ascertain what the witnesses knew. After the investigation Mr. Reily made a report to the effect that he was not prepared to believe the evidence produced on behalf of the complainant. This report bears date the 28th September. In the meantime on the 21st September a petition was presented to the District Magistrate by eight men, four of whom have deposed on behalf of the complainant, saying that since they had given evidence before the Police Saheb the Daroga had been threatening them, and asking for the protection of the court. The defence challenge the *bona fides* of this petition and suggest that it was made with the object of prejudicing the Judicial Officers; and that in any event, it shows that whatever the conduct of the Daroga was, he had not succeeded in suppressing any evidence on the side of the prosecution; and that if he was enraged he was enraged because he had been complained against. The report of Mr. Reily was not accepted by the District Magistrate, and he was directed to send up the case in A form which was accordingly done. The preliminary inquiry was held by Babu Kali Sunker Sen, Deputy Magistrate of Noakhali, and the accused were committed to the Sessions. The learned Sessions Judge with reference to this part of the case says as follows:—"On the 15th of October the A form was submitted and was made over to Babu Kali Sunkar Sen, the Senior Deputy Magistrate, for disposal. On 16th October the examination of the witnesses of the prosecution commenced, and from that date to use an expressive colloquialism, it has been all over but the shouting." We are not sure if we actually apprehend the meaning of this 'colloquialism" used in this connection in a judicial utterance. If it means that from that date the result was a forgone conclusion, then we must say that it was a most unhappy expression, showing the bent of the Judge's mind and proving what the learned pleader for the accused contented that he had approached the consideration of the case with his mind made up on the subject of the guilt of the accused.

The trial before the Sessions Judge commenced on the 7th of January 1901 and continued up to the 25th of January when "a few more words from Babu R. K. Aich for the accused were heard." The case concluded on that day and the judgment was delivered on the 15th of February, but no reference was at any time made to this Court, as by law it was incumbent upon the Sessions Judge to do. On the 16th of February a number of witnesses were required to give bail to appear before the Magistrate to answer charges under Section 193 of the Indian Penal Code. Mr. Reily was arrested and committed to jail under charges under Sections 193, 466, and 471, and the other police officers were also committed to the Sessions to take their trial under Section 193.

The witnesses who are alleged to have witnessed the occurrence are in the first instance Hossein Ali and Torab. The Sessions Judge has believed their story and, mainly upon their testimony, convicted the present appellants. Hossein Ali states that on the 9th Bhadro he had gone to Bellew Saheb's *hat*, which is shown in the map as lying to the north-west of Chur Uria about four miles from the place where he resides. His house is shown as lying towards the south of the junction of Asak Jemadar's road and Benode Bepari's road about a mile or a mile and a-half from the deceased's house. The witness says that he started on his return journey to his home about two *dandas* after sunset. Taking the sun to have set at about half past 6, as would be the case about that time of the year, that would be nearly half past seven. He says he was accompanied by Torab, whose house is somewhat south of his own; when he came close to Ismail Jagirdar's *bari* he heard the cry of *mago* (Oh mother!) from a distance of 17 or 18 cubits; that Torab and he went forward towards the direction of the cry; that they saw Sadak, the accused No. 1, holding the deceased by the throat, Aslam holding him by the waist and arms and Anwar holding him by the legs; and that they were carrying him towards the west. Then he goes on to say: "We were advancing towards them when six or seven persons came from the west and said 'seize him.' They said nothing else. Out of fear we went homewards towards the south. We could not recognise any of the men that came from the west." He also stated that the place where he saw deceased being carried was about one *kani* towards the east of his tank, and that it was four or six *gharis* after sunset which would be about 9 P.M. Admittedly it was an *amawasia* night, the night before the new moon, and the darkest night of the month; but to explain how he observed the people the witness says there were flashes of lightning and there was also star-light. On the way home they called to several people, but none of them answered, but they came across Atar Ali at the entrance of Haro Chunder Dutt's house and told him of the occurrence. He says also that he mentioned what he had seen to his brother and mother; but he admits that he gave no information to the deceased's household either on that night or the day following, or the day after, although they had heard that the deceased's body was found in the tank on the morning of Sunday; but he states that he deposed before Osman Ali

Daroga on Tuesday, the 12th Bhadro. He also says that he deposed before the Police Saheb on the 27th Bhadro, and that it was after he had deposed to the Police Saheb that Osman threatened him.

The case for the accused is that neither Hossein Ali nor the other witnesses ever deposed before the Daroga on the 12th Bhadro as they allege; and that the statement which is now made that they had given evidence before the Daroga is made with the object of removing any suspicion which may attach to their evidence as being an after-concoction. The learned Sessions Judge has believed that they had deposed before the Daroga, and that this officer had improperly suppressed any mention of their statements in his diary. So far as the present question is concerned, namely, whether Hossein Ali's statements are to be accepted or not, we may assume that he did depose as he alleges before the Daroga. Proceeding upon that hypothesis let us examine his evidence. The pleader for the defence was anxious to examine both Hossein and Torab on one and the same day, and the learned Sessions Judge on the 9th, the day when Hossein was examined in chief, appears to have considered that prayer as reasonable. On the 10th, however he found the quarterly statements so important as to engage his attention until 2 o'clock, and when he took his seat in the Court at that hour it was fonnd impossible for the learned pleader to finish the cross-examination of both the witnesses on the same day, and he accordingly was obliged to proceed with Hossein Ali's cross-examination which he was able to finish at 4-40 P. M. The case was then taken up on the 11th of January when Torab was examined. Mr. Guha was, in our opinion, fully justified in his comments regarding the attitude of the learned Judge; and he refers to a passage in the learned Judge's judgment to show that the decision of this case has not been arrived at with that unbiassed mind which is expected from a Judicial Officer. The passage he refers to is to be found in page 102. "And the natural inference is," says the learned Sessions Judge, "that the accused men's pleader either thought that these two peasants had been so carefully coached that it was hopeless for him to attempt to break them down, or that he belived that the story they were telling was a true one." Mr. Guha points to the fact that it was the Judge's own inability to sit before 2 o'clock which prevented the pleader in the Lower Court from taking the course which he was anxious to take, and that the inference which the Judge has drawn from the pleader's cross-examination of Hossein Ali on the 10th is wholly unwarranted. We have, however, the evidence on record and we must deal with it as it stands. Hossein Ali in his cross-examination admits that although there are thirty or forty houses on the way between the place of occurrence and his house not a single person answered him when he called out. He says "we were going from the north; the men holding Ismail were south of my front (which would mean exactly opposite;) the men who called out to seize us were on the west of us; they were on a level with us." "We did not start back north when they called out. We went straight on southwards. They did not pursue us." And although this man says that he had been to Ismail Jagirdar's house three or four times before, he never went and mentioned what he had seen to the family of the deceased, nor did he mention the occurrence to any person whom he met next morning. There are several *panchayets* and *matbars* living close to him; he admits he did not mention the occurrence to them either. The way in which he came to tell Idris that he had deposed before the Daroga is a circumstance for consideration. He says he met Idris two or three days after he had given his deposition before the Daroga, as he was crying on the road north of Peshkar's *hat*; he was talking to some one and crying about his father's death. "I don't know the name of the man he was talking to. I asked the man who the boy was "and the man said that he was Ismail Jagirdar's son. I told Idris that I had told the "Daroga what I knew about his father's death. He did not ask my name, nor did I tell "him, nor did the man speaking to him ask him." And this is the man who has admitted that he had been to Ismail Jagirdar's *bari* "three or four times, before the occurrence." He says he had gone to Bellew's *hat*, although close to his house there are a number of other *hâts*. Peshkar's *hat* is held on Sundays and Thursdays, Jagabandhu's *hat* is held on Fridays and Tuesdays; and yet he had gone to Bellew's *hat* in order to purchase a fishing net, and to sell, as he tells the Court at the end of his examination, two seers of chilis.

Torab states that he was returning home from Bellew's *hat* with the witness Hossein, they were going south by the road which passes to the east of Ismail Jagirdar's *bari*. Hearing a cry of *mago* (Oh mother!), they stepped forward in the direction of the sound. The witness then saw the first accused Sadak holding the deceased by the throat; Aslam by the arms and waist, and Anwar by the two legs; and carrying him towards the west. He then goes on to say: "I said to the men it is not good—are you killing Ismail Jagirdar or setting fire to Chur Uria?" When he said this he was 3 or 4 cubits from them. He says further on that "when I spoke to the men holding Ismail, 4, 5 or 7 other men threatened me saying 'seize them.' I did not recognize any of these men—they were some way off, some 15 or 17 cubits off." "When we were threatened we were afraid and went hastily to the south." This witness fixes the time when he saw the occurrence to which he deposes as six *gharis* after sunset which would be 9 P.M. and also says that he mentioned that night what he had seen to Atar Ali, the next morning to Karim Buksh, Nanda Thakur and Nur Mia. Atar is dead, but the others are admittedly alive, but have not been examined. This witness like Hossein never went to the house of Ismail Jagirdar either on Sunday or Monday to give information of what he had seen. But he says he deposed before the Daroga and the Police Superintendent. He says the Daroga threatened him after he had given his evidence before the latter. In cross-examination he admits that the accused knew him, but made no attempt to tamper with him, that he never told any one that the Daroga had forbidden him to depose before the District Superintendent; and that he did not point out to the latter officer the road by which they had come that night. He says he had gone to Bellew's *hat* to sell betel nuts although there are several *hats* close to his house in which

betel nuts are sold. He admits further that he was challaned in a case by the Sub-Inspector in which he was convicted and that he had deposed before on behalf of the deceased.

The statements of Hossein and Torab recorded by the Superintendent of Police are on the record and differ considerably from their depositions in the Sessions Court. For example, before the Police Superintendent Hossein had said he saw deceased caught by the accused ; they were carrying him towards the back of his house ; the witnesses spoke to them, "Why are you beating Ismail Jagirdar ?" the accused replied " you get away " saying which they went towards the tank. The witness then shouted when three persons came to the bank of the tank and saw the occurrence. Hossein then went on to say : "I cannot give their names. I and Torab saw the deceased seized, but did not see him killed. We did not go to Ismail Jagirdar's house. I did not tell this to my wife, mother or any member of my household. We mentioned this to Osman Ali's mother and also to Atar Ali whom we met at the gateway of Har Chunder's house." And he added, next morning when he heard Ismail Jagirdar had been killed he did not mention the occurrence to his relations or any other persons.

Before the Police Superintendent Torap first stated that he saw Ismail killed by Sadak, Aslam and Anwar ; that he was seized by 10 persons in all. He then changed his statement and said he had not seen the deceased killed. Sadak seized the deceased by the neck, Anwar by the legs and Aslam by the waist, and how the other seven persons held him he could not say. All the ten accused carried the deceased to the tank. He could not say what they did with the deceased. He then says as follows :—" We called out why are you killing this man ? They replied go away. We raised an outcry no one came. The night was dark and it was raining a little. We saw what was taking place by the flashes of lightning. We did not mention anything to the inmates of Ismail Jagirdar's house. We did not go to his house. Through fear we did not say anything about it." Then he said that they met Atar Ali near Asabuddin's house on the public road about half a mile from Har Chunder's house whom they told of the occurrence. Torab also said they had told this that night to Osman Ali's mother from her gate way, but that he did not say anything to anyone next day. He further stated that when deceased was seized, he called out "*mago, mago, marilore, marilore*" "Oh mother ! Oh mother ! I am being killed, I am being killed."

The discrepancies between the statements of Torab and Hossein before the Police Superintendent as also between those statements and the evidence given by them in Court are apparent, and the defence naturally relied upon those discrepancies to show the unreliable character of the testimony of these two witnesses for the prosecution. The learned Sessions Judge disposes of this point in the following passage.

"The next defence set up for the accused is that the other most important witnesses Hossein, Torab and Islam made to Mr. Reily on the 12th September statements differing in certain respects from what they say now. In most cases the discrepancies are comparatively unimportant—in no case are they admitted by the witnesses who as to somethings flatly deny having told the Police Saheb so and so, in other matters simply say they do not remember having told him so and so. Even if Mr. Reily were in a position to say positively that the men made to him the statement he has recorded (and he admits that without referring to his diary he cannot remember what they said), Mr. Reily has perjured himself so grossly on other points that I should not be disposed to believe him. But I think it sufficient to point out that Mr. Reily admits that he does not thoroughly understand the dialect of Bengali spoken in this District and that parts of what he has written were translated to him by his Head Clerk, that he cannot say which parts were so translated, and cannot say with regard to any particular statement that it was not so translated, and that the Head Clerk who alone could say whether he translated it correctly has not been examined."

In other words in a case where the accused were being tried for their lives, the evidence of the witnesses for the prosecution is to be accepted as true and any discrepancies between their former and present statements put out of consideration because forsooth, they deny having made statements of a different character or do not remember them and because the officer who recorded those statements may not be thoroughly conversant with the language in which the evidence was given, without anything being shown that he had not properly understood them. We wholly and absolutely refuse to give our warrant to such an *à priori* reasoning, which proceeds upon the assumption of the truth of the case for the prosecution and the falsity of the defence.

We have had occasion recently to observe that sometimes the Subordinate Magistrates in this country in the trial of criminal cases reversed the right principle of law that a person accused of the crime should be presumed to be innocent until he is proved to be guilty. In our opinion in the trial of this case that wholesome rule was reversed by a Judge, who, from his judgment, does not appear to be wanting in ability.

This is not the only passage which gives an indication of his mind ; the judgment teems with observations which prove to us beyond reasonable doubt that, whatever the cause, he had started upon the trial with the settled idea that not only the accused before him, but the others whose names had been given by the complainant and his partizans, were guilty.

With these remarks we proceed to consider the evidence of Hossain and Torab, the principal eye-witnesses in the case. In order to understand their evidence it is necessary to keep in mind the excellent map prepared by the Head Constable Mohim Chunder Mozumdar regarding which we have already expressed our opinion. They say they were returning home by Benode Bepari's road, as the other road which was shorter and would

have brought them quicker to their houses had several breaks, one with water up to the waist. The District Superintendent when he inspected the place, as admittedly he did, did not consider the breaks so deep or difficult to get over as the witnesses represented. In this view he is supported by the Sub-Overseer Saroda Mohun Chuckerbutti who after mentioning the three breaks on Asak Jemadar's road, said the biggest break was between P and R (on his map) which is 60 feet long and 2 feet deep. And in answer to the Court he added "I mean that the bottom is two feet below the level of the road." In cross-examination, however, he explained himself thus "the depth of two feet is in the centre of the break, at the edge it would not be more than nine inches from the level of the road."

The learned Sessions Judge, however, from his personal observation the result of which is not entered in any separate proceeding, came to the conclusion that the break was such as would induce people not to travel by that road at night. It is a noticeable circumstance in this case that the witness Ismail or Islam upon whom the Sessions Judge has relied, does not appear to have considered that break so formidable or to have been deterred by it, as we shall see later on, from going home that way.

We shall, however, consider the evidence of the two witnesses mentioned above from the standpoint of the learned Sessions Judge that they came by Benode Bepari's road and that they made no conflicting statements before the District Superintendent of Police. In the early part of the night there had been rain, and they say they had taken shelter in a blacksmith's hut and thus were late; and they say they saw the seizure of the deceased from R and S right on the road and that the deceased was seized at K which is directly opposite to the path south of the tank leading to Ismail Jagirdar's house. The time, as already mentioned, they give as 6 *gharis* after sunset which would be about 9 P. M. The theory of the prosecution is that the deceased was caught as he was returning from Noakhali town, stunned, throttled and thrown into the tank.

Now, one thing is absolutely clear in this case that the deceased finished his deposition in the Noakhali Court about 5 or 5-30 P. M. that Saturday afternoon. He was next seen by a witness Abdul Mir in the company of two constables Ahmadullah and Abdul Aziz in front of his (Abdul Mir's) house which is on the Lakhimpur road which runs from east to west along the north of Chur Uria. Abdul Mir was one of the witnesses whom Osman Doroga had discovered in the course of his investigation. He appears to be a respectable man and thoroughly independent. He says the time he saw him was after sunset, he had a piece of new cloth under his arm, and was wearing a *piran*, coat, a sheet and a shirt, was carrying an umbrella and it was raining hard at the time. The Sessions Judge has persisted in translating *dhuti* into shirt. Possibly the word "shirt" here in the original deposition was *dhuti*. The witness asked Ismail to stop at his house but he did not. According to this witness his house is only a mile from that of the deceased.

Ahmadullah, the constable in whose company Abdul Mir had seen Ismail Jagirdar, has also deposed in this case. He says that on Saturday the 9th of Bhadro he had met the deceased at the *daroja* of Asad Mullah who is apparently a relative of Abdul Mir. He then states as follows:—"Abdul Aziz Constable, was with me. I was returning home from the town and met him on the way. Ismail Jagirdar was going towards his home from the direction of the town. My house is about 1½ miles from Ismail's. We all three went together as far as Kala Bhanga *dighi* near there we separated, Ismail going by the southward road which passes by the east side of the *dighi* while we went by the Government road which leads to the west by the north bank of that *dighi*. Ismail was alone when he parted company with us. I deposed before Osman Ali Daroga two or three days afterwards."

In cross-examination he states that Ismail's house is a little under a mile from the Kala Bhanga *dighi* (the place where they had parted). It was raining when they had got to Asadullah's *daroja; it was just after sunset.*

According to the witness Abdul Aziz (witness No. 7) Kalabhanga tank is a mile or a mile and a half from Ismail Jagirdar's house. According to Mr. Reily the distance is only ¾ of a mile which is probably more correct, for Abdul Mir says his house is only one mile from the deceased's; and the constable Amadullah says, Asadullah or Abdul Mir's house is half a mile from the *dighi*.

We have it then that shortly after sunset which as already mentioned, would be 6-30 P. M. the deceased was seen a mile or thereabout, from his house. Supposing it was as late as 7 P. M. he had only a mile to travel to reach his house, even if he walked slowly (which is not consistent with the evidence) he would not take more than half an hour to finish his journey and yet the witnesses profess to say that they saw him seized at 9 P. M. We may here observe that these men could not time their arrival earlier near the deceased's house as the rain, which they alleged had detained them in the blacksmith's shop at the *hât*, ceased (according to independent testimony) only about two *gharis* after sunset (see Abdul Mir's deposition. p. 41 and Idris, p. 16). The learned Sessions Judge has disposed of this contradiction in a somewhat peculiar manner, first by stating that people of the class fromwhich the witnesses come are not particular as to time; and secondly by a hypothesis advanced by the Government pleader for which there is absolutely no foundation in the evidence. He refers to the medical evidence to support the fanciful theory of the Government pleader. It is strange however that the Sessions Judge did not take the trouble to have the doctor examined in his Court and to have all the doubtful points cleared up and his testimony properly sifted.

But there is another circumstance, which seems to have escaped the notice of the Judge, and which, in our opinion, shows beyond any doubt that the two witnesses Ismail

and Hossain have been lying. We have already mentioned that to the north of Ismail Jagirdar's tank there is a village road which joins Benode Bepari's road on the east, and this village road also leads to the deceased's house. If the deceased then was coming from the north, he would naturally take the first road to his house; there was no reason whatever for him to leave that turning and to come down futher south which must necessarily take him past the house of his principal enemy Sadak.

There are two other circumstances which strengthen the view that the evidence of these two witnesses is not true. First, it is in evidence that the deceased left home wearing a *piran* or coat, a sheet and a *dhuti* and a cap; he had also an umbrella and some papers in his pocket. Returning home he was dressed in the same way and had besides a bundle under his arm. When his body was found in the tank, he had only a *dhuti*; so that unless the people who murdered him also took off his clothes and robbed him of his papers, his parcel and umbrella, he could not have been attacked in the way suggested by the prosecution on his way home from Noakhali. The houses of the accused were searched by the police in the presence of a number of people. The tank was searched not only by the police but also by Idris. But none of the missing articles have been found. Besides, if murder was the object, it would seem improbable that the clothes of the deceased and other articles would be deliberately taken away, as it would multiply the chances of discovery.

Rajab Ali (witness 4) states that on the 9th of Bhadro "just as the sun was setting" he had seen the four accused (*viz.*, the appellants and Yakub Ali) on the road under a banian tree. The place where he saw them is marked L on the map Aa, on the road which diverges south-west from Lakhan Bakshi's road. The special diary of the sub-inspector bearing date the 30th of August shows that upon information given by Nando Bashi, whom the defence allege to be a material supporter of the prosecution, the police officer sent for two men of the names of Umar Ali and Umed Ali who stated that on the night of the occurrence about 7 p.m., they had seen the deceased "on a culvert on the public road to the east of the Utshaba tank"; he was then going towards his house. The place where Umed Ali alleged he saw deceased is marked M on the map and is considerably towards the south of the deceased's house. These two men have not been examined in the Sessions Court. As the special diary containing their statements, was before the Sessions Judge, we should have thought that in order to clear up the mystery and to elucidate the truth, he would have, of his own motion, as he did in the case of Mr. Reily, examined those persons. He, however, did not chose to do so; and the doubt remains whether the prosecution did not at first intend to place the route taken by Ismail Jagirdar along Lakhan Bakshi's road, and changed the story when Abdul Mir and Ahmadullah appeared on the scene and deposed that the deceased had been seen about the same time taking a totally different direction.

After carefully and anxiously weighing the evidence of Hossain and Torab we have been forced to the conclusion that it is utterly unreliable.

The conviction of Anwar Ali, Appellant No. 3, depends solely on their testimony and must consequently fail. We set it aside and direct that he be discharged

We now come to the evidence of Ismail or Islam who speaks to an incident unconnected with that deposed to by Hosain and Torap, and has, therefore, to be examined from a different stand-point. He says on the evening of the 9th of Bhadro he had gone to the house of Karim Buskh (a brother of Yakub) for the settlement of a case: Karim's house lies to the north-west of the deceased's *bari*, and to the east of Asak Jemadar's road. He was returning home "about one *prohar* after sunset" (9 p.m.). He first took the village road to the north of the house of Ismail Jagirdar and to the south of Imdadullah's. When he was near the south-western corner of the tank, he saw four men carrying a dead body from east to west by the southern bank. He recognized three of the men Sadak, Aslam and Yakub: the fourth he thought was Abdul Halim who was discharged by the committing magistrate. Upon his asking what it was, Sadak Ali abused him and told him to be off. He was frightened and ran home. The road he took was towards the west past Niamuddi Miaji's shown in the map. He saw eight men conversing, among them was Abdul Hakim, brother of Yakub. He told them what he had seen, but they told him to mind his own business. Passing by the *daroja* of Abdul Aziz he called out to him and told all the circumstances. Abdul Aziz accompanied him some distance. Next morning he heard that Ismail's body was found in the tank. He then told two men, Amjad Mir and Hamida Thaka, what he had seen overnight.

Amjad Mir has been examined for the defence but no question was put to him by either side whether Islam's statement that he had told Amjad of what he had observed was true or not. In cross-examination Islam states that from Karim Buksh's house he went first south, then east, then turned south again by the path which passes to the west of Ismail Jagirdar's tank. He had come round the south-west corner of the tank and had gone 4 or 5 cubits east from the corner, and was turning to go south when he saw the dead body. And he adds that it was a dark night but starlit, with flashes of lightning. This man's *bari* is three-quarters of a mile from the deceased's.

Before the Superintendent of police this witness had stated that he did not mention to any of the inmates of the house what he had seen nor next morning tell anybody else.

[redacted] on the night of the 9th of Bhadro the [redacted] "come with me a little way I am afraid." He said also [redacted] the west bank of Ismail Jagirdar's tank when I saw three or four men

carrying something which looked like a dead body.' I asked him if he had recognised the men; he said, 'yes, they were Sadak, Aslam and Yakub Ali.' I did not ask him anything more."

In cross-examination he admits he did not tell of the occurrence to any one before he deposed to the Daroga, and never told Idris about it.

Before the district superintendent of police, he had stated that Islam had told him he had seen Sadak and Aslam and "some two others" carrying a body; and that the night was dark, "too dark to see anything."

Had the evidence of Ismail or Islam, although corroborated as it appear to be by Abdul Aziz stood alone, we should have had some hesitation in differentiating it from that of Hossain and Torab. But there are several circumstances in the case which make us think that the testimony of this witness requires careful consideration.

His recognition of the accused has been discounted by the assessors and the Sessions Judge in so far that they have not accepted his testimony against Yakub Ali. The night was too dark to see anything and the men carrying the body were apparently under the shade of trees. The doubt, the benefit of which has been given to Yakub, applies also to the identification of Aslam by this witness, but as regards Sadak he states he heard his voice and that the accused No. 1 actually spoke to him. If belived, he would have reasonable means for identifying Sadak. The question is should he be believed? It appears to us that as against Sadak his evidence must be considered in conjunction with several circumstances.—(1) The threats to the deceased held out by Sadak as deposed to by Idris that "he was digging his grave" and that "this is his last time;" (2) Sadak's attempt on the night of the tragedy according to Abdul Aziz, the boat man, to leave the locality, and (3) the marks of the struggle on the pathway leading to the deceased's house, in close proximity to Sadak's *bari*.

In view of the course which we propose to take so far as Sadak is concerned we do not wish to express, nor would it be expedient or right that we should express, any opinion on the facts to which we have referred. But we think we are entitled to explain the conclusion to which the general evidence has led us as to the time when and the circumstances under which this crime appears to us to have been committed. From the fact that when the corpse was found the deceased had no clothes on the upper part of his body, and that none of those clothes have been discovered in the tank or in the houses of the persons suspected of being concerned in his murder, it may safely be assumed that he had returned home. Whether Idris or his mother had seen him return is a question with which we need not concern ourselves. It is possible he may not have gone inside at all after his arrival. The hour when he parted with the constables Ahmadullah and Abdul Aziz would bring him home by the path north of his tank by half past seven or earlier. He must have then taken off his clothes and on going out afterwards, probably to the tank, was attacked by somebody.

The marks of the struggle seem to indicate one assailant, although it is possible that in disposing of the body more than one may have taken part. But this is a mere suspicion, and does not furnish a safe ground for drawing any inference against the accused other than Sadak.

The medical evidence does not show clearly whether the man was dead before he was thrown into the tank. It may be difficult at this distance of time to clear up this point, and as we have said before, it was singularly unfortunate that the doctor was not examined in the Sessions Court. The medical evidence, however, is clear that death was due to violence.

We think that the case against Sadak Ali, the first accused stands upon a totally different footing from the others. In our opinion, however, he has not had a fair trial in the Court below, and we think that the proper course for us to take is to direct that he should be re-tried. We accordingly set aside his conviction and direct that he be re-tried.

With regard to the statement of the boat-man Abdul Aziz that Aslam was in Sadak's company when the latter wanted to get away from the neighbourhood, we may observe that Aslam seems to have taken little or no part in the trying to secure the boat, and his presence with Sadak may be explained by a hypothesis, other than that of guilt, namely, relationship to the accused No. 1. In short, it is difficult to say merely on that circumstance that he had a hand in the crime. For the reasons already given we set aside the conviction of Appellant No. 2 (Aslam) and direct that he be discharged.

We now come to that part of the proceedings in the Court below which has caused us very great regret. A judge is entitled to comment on the conduct of any person directly or indirectly concerned with the case; in a criminal trial, he is entitled to criticise the laches or deficiencies of the police who are charged with the investigation or detection of the crime. Indeed, in our opinion, he would be failing in his duty were he to act otherwise when he has come to the conclusion that the police had not done their work properly or honestly. But in this case the learned Sessions Judge in his observations on the conduct of the Superintendent of the Police appears to have exceeded all legitimate limits of criticism. Even this may be considered excusable as due to generous indignation that the police should be a party to what the judge conceived to be a miscarriage of justice. But there is no possible excuse for introducing into the judgment matters which have not the remotest relevancy to the case, and comments upon people who have no sort of connection or concern with it. The Judge starts with the hypothesis that besides "the conviction or

acquittal of four men on a capital charge" there are other and graver issues involved in the case. We desire to lay down emphatically for the information of the subordinate judiciary that in a criminal trial there is one issue, and one issue only, for the determination of the Court, *viz.*, the guilt or innocence of the persons accused.

The high position of a Judge and immunity with which the law surrounds his office and utterances are based on the assumption that he forms his judgment upon a calm and dispassionate consideration of the facts before him, and gives expression to his views in a judicial spirit without importing into it personal feeling or personal bias. It would be intolerable if a judgment was to be made the vehicle for giving vent to individual grievances or personal animosity or for the purpose of posing as the champion of public liberty. The introduction upon the record against all rules of law and principles of evidence of documents which have not the faintest bearing on or connection with the case which the Sessions Judge was trying, with the plain object of enabling him to ventilate his own grievances, real or fancied, and delivering a homily to the public upon the general wrong-doing of high-placed officials, has made a travesty of justice.

The judgment in this case in my opinion, and I say this with extreme regret, infringes every canon of judicial decorum and judicial propriety.

AMEER ALI.

The 17th April 1901.

Pratt, J.—I concur in the judgment which has just been delivered by my learned colleague and desire to add only a few remarks regarding the conduct of the presiding Judge in the Court below.

The spectacle which Mr. Pennell the Sessions Judge has presented in this case must be painful to every right thinking man.

The record abounds with documents which were not used in evidence either by the prosecution or on behalf of the defence. Mr. Pennell has chosen to import them himself and to make them Exhibits in defiance of the law of evidence, and ostensibly that they may be made public for his own personal and ulterior purposes.

He has set no bounds to his intemperate language, nor hesitated to heap vituperation upon the Viceroy, Lieutenant-Governor, High Court Judges, and many others wholly unconnected with the case before him. Imagining himself safe under the shield of what the law calls "privilege," he has taken an undue advantage of his position as Judge in order to vent his irritation upon all and sundry who he conceives, have incurred his resentment. It is not that he has in an unguarded moment given utterance to some ill-advised expression. Fully one-third of the judgment which occupies 80 pages of print and which he admittedly took 16 days to write, is devoted to a scathing condemnation of officials high and low in respect of matters wholly irrelevant to the case under trial. It can hardly be deemed honourable for a Judge to draw pay from Government for time spent not in performing the plain judicial duty that lay before him, but in elaborating an uncharitable indictment against that very Government, as well as against several individuals whose position as he well knew precludes them from offering any reply.

It is to be regretted that Mr. Pennell did not pause to reflect what a pernicious example he was setting to the subordinate judiciary. How could accused persons expect a fair trial, or how could the criminal administration of the country be regularly and decorously conducted if judges and magistrates were to air their individual grievances under cover of judicial decisions? Such a state of things could not be tolerated in any well ordered community.

The manner in which this trial has been conducted has placed the accused at a great and manifest disadvantage. The Judge did not bring to the trial a calm and dispassionate mind. He approached the case with preconceived ideas, readily accepting as true whatever evidence was adduced against the accused, and thus fail to discern or admit what ought to have been patent to any unprejudiced mind, *viz.*, that Hosain Ali and Torab Ali were false witnesses. He protracted the proceedings to a very unnecessary length, he allowed the Sub-Inspector's diaries to be exhibited and used for the purposes of the prosecution, but stopped the pleader for the accused from using them in his address to the Court. Moreover he exhibited numerous irrelevant documents behind the backs of the accused, and allowed them to distort his judicial vision and to produce in him a morbid belief, highly prejudicial to the accused, that the executive authorities were anxious to frustrate justice. The conviction of the accused was almost a foregone conclusion, or to adopt the Judge's own language "it was all over, but the shouting" directly the magistrate began to examine witnesses.

Under such circumstances it would be impossible for us to affirm the conviction of persons who have not had a fair trial. Sadak Ali's guilt or innocence must be determined by a new trial. As regards Aslam and Anwar Ali, their evidence is of such a nature that I have no hesitation in agreeing to their immediate discharge.

J. PRATT.

The 17th April 1901.

ANNEX No. 43 TO No. 1.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

The 26th April 1901.

CRIMINAL JURISDICTION.

Present:

THE HONOURABLE MR. JUSTICE AMEER ALI,
and
THE HONOURABLE MR. JUSTICE PRATT,
Two of the Judges of the Court.

In the matter of

W. Y. Reily ... ... *Petitioner,*

versus

The King-Emperor ... ... *Opposite party.*

This proceeding arises out of the case of the King-Emperor against Sadak Ali and others disposed of by us on the 17th instant. The petitioner, who was holding at the time the office of District Superintendent of Police at Noakhali, appears to have been cited as a witness for the defence in that case. He was, however, called by the Sessions Judge himself on the 16th of January and was examined for three consecutive days. On the 7th of February he was ordered to enter into recognizances for appearance in the Sessions Court on the 11th following, and on any subsequent date to which the case may be adjourned. On the 15th of February the Sessions Judge delivered his judgment in the case, and on that day he had the petitioner arrested and committed to jail on charges under Sections 193, 466 and 471 of the Indian Penal Code. The 25th was fixed for commencing the preliminary inquiry. No proceeding was drawn up on that date (the 15th), the order now before us being recorded only on the following day, namely, the 16th of February. That order is in these terms :—" In the course of the Session's trial of Empress *versus* Sadak Ali and three others decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered, that W. Y. Reily, superintendent of police of this district, has committed offences under Sections 193, 466 and 471 of the Indian Penal Code, and that it is my duty to hold an inquiry preliminary to committing him to the high court to be tried for those offences. Mr. Reily was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding. He will be produced before me as directed in the warrant on the 25th February, when evidence will be taken." After the disposal of the case in this court, the petitioner applied for and obtained the present rule, calling upon the magistrate of the district to show cause why the proceedings instituted against him under those sections by the Sessions Judge of Noakhali, on the 16th of February, should not be set aside, *first*, on the ground that they are not warranted by law, as there was no proceeding drawn up on the day that he was committed to jail; *secondly*, on the ground that no specific statements are set out in the proceeding drawn up on the 16th upon which the petitioner is charged with having committed perjury; *thirdly*, on the ground that there are no statements in the said proceeding showing the character of the forgery charged against him under the sections referred to above, and, *fourthly*, on the ground that otherwise there is no foundation for the proceeding against him. The Sessions Judge has purported to act under Section 477 of the Code of Criminal Procedure, which provides that " subject to the provisions of Section 444 the Court of Sessions may charge a person for any offence referred to in Section 195 and committed before it or brought under its notice in the course of a judicial proceeding and may commit or admit to bail and try such person upon its own charge." It is an empowering section, and authorises a Court of Sessions when an offence referred to in Section 195 of the Code of Criminal Procedure has been committed before it or brought under its notice as mentioned in the section, to charge the offender and to commit, or admit to bail and try him upon its own charge. We observe that the Sessions Judge in one part of his judgment thinks the word " may " ought to be read as " must." There is no warrant, however, for that view. Having regard then to the phraseology of the law, it appears to us that if a Court of Session proceeds to take action under Section 477 it must in the first instance frame a charge so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the charge, the Sessions Court may then either commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose. In the present case the Sessions Judge had framed no charge when he had the petitioner arrested and committed to jail, nor was his proceeding of the 16th of February in any sense a charge of such a

commitment. It contains no particulars of the statements made and acts done by the petitioner upon which perjury and forgery are charged against him. In our opinion the proceeding of the 16th of February was not warranted by law. The order states that "Mr. Reily was yesterday arrested and committed to jail. There was then no time, owing to the lateness of the hour, to draw up this formal proceeding. He will be produced before me, as directed in the warrant, on the 25th February, when evidence will be taken." So that, the petitioner, against whom no definite accusation had been formulated up to that time, and in whose case, according to the Sessions Judge himself, a preliminary inquiry was necessary, was to be kept in jail for nine days before even the matter could be inquired into. A preliminary inquiry is necessary for the purpose of determining whether there is a *primâ facie* case against the person accused. As the Sessions Judge did not charge the petitioner as he was empowered to do, and as he considered a preliminary inquiry necessary, it seems to us that until then, in the opinion of the Sessions Judge, there was not even a *primâ facie* case against the petitioner. In view of these facts we cannot help regarding the action of the Sessions Judge with the strongest disapproval.

Apart from the illegality of the order as already mentioned, and dealing with the merits of the case, we are of opinion that there is no foundation for the proceeding. We have already expressed our opinion in the judgment in the main case respecting the allegations of perjury made against the petitioner. We do not desire to repeat our observations. We may add, however, that we have again gone through the judgment of the Sessions Judge, and beyond surmises and assumptions we find nothing to justify the view that the petitioner wilfully perjured himself or intentionally gave false evidence in court.

There is less ground even for the charge of forgery. On the 15th of September the petitioner had visited the village and had a sketch map prepared of the locality by the writer head constable Mohim Chunder. A fair copy was made afterwards and both the draft and the fair copy were produced at the trial and are marked respectively as Exhibits A*a* and A. Exhibit A bears the signature of the petitioner, and the date 15th September. The learned Sessions Judge thinks that exhibit A could not have been prepared on the 15th, and he therefore comes to the conclusion that the petitioner had purposely antedated his signature, "because he did not want Mr. Ezechiel to know that Exhibit A was a copy. He wanted Mr. Ezechiel to believe that it was a plan made by himself on the 15th instead of being, as it really is, a copy made after the 15th of a plan made partly in and in great part (and that the most important part) out of Mr. Reily's presence on the 14th, 15th and possibly subsequent dates." It is worthy of note that not a single question was put to the petitioner to enable him to explain the circumstances under which he came to put the date on the map as the 15th September. Again, it appears that there are two pencil marks on Exhibit A*a* which the petitioner states were intended to indicate two breaks on one of the roads. These two pencil marks are not shown on Exhibit A. The petitioner explains the absence of those marks by saying :—"It might be an omission on the part of Mohim Chunder." The Sessions Judge, however, thinks that the petitioner tampered with Exhibit A*a* after it had been prepared. We must quote here the Judge's own language. Referring to the draft he says as follows :—

"The rough map is Exhibit A*a*. Mr. Reily admits that he had it in his hand two days before Tarak Babu examined him, *i.e.*, on the first day of his exmination. He had therefore the opportunity of tampering with it. And it is very significant that Bharat Babu, who says in cross-examination that he saw the draft as it was made, declared, even without taking it into his hand, that he did not see Exhibit A*a* the plan Mr. Reily swears is the draft, and when pressed says that he cannot say for certain whether or not it is the draft. I think most likely it is the draft, but that Bharat Babu knows it has been added to and does not want to be asked about the additions. Both Exhibits A and A*a* are the work of the head constable Mohim Chandra Mozumdar. And as Exhibit A has nothing of Mr. Reily's but his signature and the date, so Exhibit A*a* has nothing of his but certain pencil marks shortly to be noticed. Both the entries are false documents within the meaning of Section 464 of the Indian Penal Code ; for in each case Mr. Reily's intention, when he made the entry, was to make people (in the first case Mr. Ezechiel, in the second this court) believe that the entry was made at a time at which he knew that it was not made, and as the documents purported to be made by a public servant in his official capacity, Mr. Reily, by making them, appears to have committed offences under Section 466 of the Indian Penal Code, and by using them, as genuine, to have committed offences under Section 471." In page 127 occurs this remarkable passage :—"I now come to the draft Exhibit A*a*. Mohim Chandra Mozumdar who made this draft says he did not show any break in it at all, that he was never told to, and did not think it necessary to. But Mr. Reily points to two pencil marks at the place marked Exhibit A*a* and says he made these to indicate the break, and so I have no doubt he did make them, but I have equally little doubt that he made them on the 16th January 1901, and not on the 15th September 1900. Mr. Reily explains the absence of any such marks from Exhibit A by saying it might be an omission on the part of Mohim. But the far more obvious explanation is that Mr. Reily was unable to tamper with Exhibit A."

It is needless to refer to the absence of sequence in the reasoning or the assumptions on which it proceeds. Taking it however that Exhibit A was purposely antedated to deceive Mr. Ezechiel, and that the pencil marks were put in exhibit A*a* after it had been prepared, we fail to see how the petitioner could be charged under Sections 466 and 471 of the Indian Penal Code. Section 463 which defines the term "forgery" runs as follows :—"Whoever makes any false document or part of a document with intent to cause

damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery." Section 464 then explains the expression "making a false document." The elements of fraud or dishonesty, as explained in the Penal Code, must be present in the mind of the person accused to bring his act under Sections 466 and 471 of the Indian Penal Code. In our opinion the charge against the petitioner of committing forgery or making use of a forged document, even upon the assumptions of the Sessions Judge, cannot be sustained. But in our judgment there is no ground for the assumption of the Judge that exhibit A was purposely antedated. The inspection of the locality having unquestionably taken place on the 15th and the results noted in Exhibit A*a*, the fair copy, whenever prepared (and excepting the hypothesis of the Sessions Judge there is nothing to show it could not have been prepared on that day) would naturally bear the date of the inspection, and any other date would misrepresent the fact.

As regards the pencil marks on Exhibit A*a*, there is absolutely no reason for suggesting them to be dishonest interpolations by the petitioner or for not accepting his explanations regarding their omission from Exhibit A. It was no doubt wrong on the part of the petitioner not to have insisted on the breaks being shown on the maps, and that error of judgment is deserving of censure, but in our opinion the imputation of forgery and of having used a forged document is not only groundless but a straining of the law as well as the facts.

We may observe in this connection that the offence of giving false evidence, Section 193, is bailable, so also is the offence of using a forged document, Section 471, whilst forgery, Section 466, is non-bailable. It was unfortunate that the Sessions Judge applied Section 466 against the petitioner in the way he has done, as it gives colour to the suggestion made at the bar that it was purposely used to deprive the petitioner of the right of bail.

We regret to observe that in dealing with this matter the Sessions Judge does not seem to have maintained a judicial balance of mind.

For these reasons we think that his order must be set aside, and we set it aside accordingly.

A copy of this judgment will be forwarded to the Local Government.

AMEER ALI.
J. PRATT.

The 26th April 1901.

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